

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal Action
)	No. 13-10200-GAO
)	
DZHOKHAR A. TSARNAEV, also)	
known as Jahar Tsarni,)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

JURY TRIAL - DAY TWENTY-THREE

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Tuesday, February 24, 2015
10:35 a.m.

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Cheryl Dahlstrom, RMR, CRR
Official Court Reporters
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P R O C E E D I N G S

THE COURT: Good morning, everyone. We are continuing the process of selecting a jury for the case of the United States vs. Dzhokhar Tsarnaev. As you know, Mr. Tsarnaev is charged in connection with a bombing that occurred near the finish line of the Boston Marathon on April 15, 2013, and that resulted in the deaths of three people. He's also charged in the death of an MIT police officer and other crimes occurring on April 18 and 19, 2013. Some, but not all, of the crimes charged are, by statute, potentially punishable by death.

You will recall from my prior instructions that the trial jury will first consider and decide whether the government has proved Mr. Tsarnaev's guilt of any or all of the charges against him. If he is convicted of any of the capital crimes, that is, crimes potentially punishable by death, the jury will then consider and decide whether he will be sentenced to death for any such crime or to life in prison without the possibility of release.

You may have wondered why the death penalty could be a possibility in this case in view of the fact that the laws of Massachusetts do not provide the death penalty for murder or any other violation of Massachusetts law. The reason is that this is a federal case involving alleged violations of the laws of the United States rather than a state case involving violations of the laws of Massachusetts.

1 If the jury convicts Mr. Tsarnaev of any one of the
2 capital crimes charged in the Indictment, the same jury will
3 hear additional evidence and then decide whether to sentence
4 him to death or to life in prison without the possibility of
5 release.

6 Because the jury that is selected to decide the
7 defendant's guilt or innocence will also decide his punishment
8 if he's convicted of a capital crime, it is necessary to
9 question jurors about your feelings and beliefs about the death
01:42 10 penalty as part of the process of selecting the jury.

11 Let me explain briefly the procedures that must be
12 followed in a case in which the death penalty is or may be at
13 issue. As in any criminal trial, initially the government will
14 have the burden of proving that Mr. Tsarnaev is, in fact,
15 guilty of any crime with which he is charged. If he is
16 convicted by the jury of a crime for which the death penalty
17 may lawfully be imposed, there will be a second phase of the
18 trial, usually referred in shorthand -- referred to in
19 shorthand as the penalty phase.

01:42 20 In the penalty phase, the government will introduce
21 evidence that seeks to prove beyond a reasonable doubt that:
22 first, Mr. Tsarnaev acted with sufficient intent to be subject
23 to the death penalty; and, second, that aggravating factors
24 about the killings or about the defendant justify sentencing
25 him to death. Aggravating factors are circumstances that, if

1 proven, make the crimes particularly serious or blameworthy
2 and, therefore, under the law, may justify imposing a more
3 severe sentence on Mr. Tsarnaev compared with other persons who
4 have been convicted of intentional killing or murder. The
5 government will bear the burden of proving any alleged
6 aggravating factors to every juror beyond a reasonable doubt.

7 The defense will have the opportunity to present
8 evidence of what it will argue are mitigating factors.
9 Mitigating factors are usually circumstances about the crime or
01:43 10 crimes or about the defendant's background or character that
11 would suggest that the death penalty is not the appropriate
12 sentence in the case or that life imprisonment without the
13 possibility of release is adequate to punish the defendant.

14 Unlike the proof of aggravating factors, a mitigating
15 factor must only be proven by the greater weight of the
16 evidence. That is a less demanding standard of proof than
17 proof beyond a reasonable doubt. Again, unlike the proof of
18 aggravating factors, mitigating factors do not have to be
19 proven to the satisfaction of all 12 jurors. Any juror who
01:44 20 finds or determines a mitigating factor to have been proven by
21 the greater weight of the evidence may consider that factor in
22 deciding the appropriate sentence in the case regardless of
23 whether any or all of the other jurors agree that a mitigating
24 factor has been proven.

25 After the parties have made their presentations during

1 the penalty phase, the jury will weigh all the evidence.
2 Before a jury could vote to impose the death penalty, every
3 juror would have to be persuaded that certain threshold factors
4 that make the defendant potentially subject to the death
5 penalty have been proved beyond a reasonable doubt.

6 In addition, in order to impose the death penalty,
7 every juror would have to be persuaded that any proven
8 aggravating factors outweigh any mitigating factors found by
9 any juror or jurors to justify a sentence of death. Even if
01:45 10 the jury did not find any mitigating factors in the case, it
11 would still have to be unanimously persuaded that any proven
12 aggravating factors were themselves sufficient to justify a
13 death sentence.

14 You should understand that a jury is never required to
15 find that a sentence of death is justified. The decision
16 whether the government has proven that a defendant should be
17 sentenced to death must ultimately be made by each juror
18 himself or herself. If, however, every juror is persuaded that
19 the death penalty should be imposed, I would be required, as
01:46 20 the trial judge, to sentence the defendant to death. In other
21 words, I could not change the jury's decision. The jury, and
22 not the judge, is responsible for determining whether a
23 defendant who is convicted of a capital crime will live or die.

24 What I've just described is an overview of the law
25 applicable to a jury's consideration of the death penalty. If

1 you are selected to serve on the jury and if you find the
2 defendant guilty of a crime or crimes punishable by death, I
3 will then give you very detailed instructions concerning your
4 duties in deciding whether to impose the death penalty or life
5 imprisonment without possibility of release and the law that
6 must be followed in making that decision.

7 As I told you before you filled out your
8 questionnaires in this case, there are no right or wrong
9 answers to any of the questions you have been asked or that you
01:47 10 will be asked today. We ask them because both the defendant
11 and the government are entitled to a jury that does not have
12 its mind firmly made up one way or another before hearing the
13 evidence and a detailed explanation of the law. That applies
14 both to whether the defendant is guilty or not guilty of the
15 specific crimes charged in the Indictment and, if he is
16 convicted of a capital crime, whether he should be sentenced to
17 death or to life in prison without possibility of release.

18 So today we're going to question each of you
19 individually about issues relevant to the selection process.
01:47 20 In a moment, we're going to ask you to return to the jury room
21 where you've just been assembling, and we'll call you into the
22 courtroom one by one to ask you some questions.

23 There will be a few people in addition to the lawyers
24 and their staffs present here in the courtroom during the
25 process, and the proceedings are being simultaneously

1 transmitted by video and audio to other courtrooms where there
2 are people observing.

3 We will not identify you by name but rather by number,
4 and you will be seated so that the video camera will be behind
5 you. Your answers will generally be public; but if you believe
6 a truthful answer would require you to reveal sensitive,
7 personal information, we will temporarily stop the audio
8 transmission to the other courtrooms so that people observing
9 there will not hear your answer.

01:48 10 Again, we do not expect or want any particular answer
11 to any question. All we want and what the law expects is that
12 you provide accurate and truthful answers to the questions
13 you're asked. If you do that, you will be doing your duty as a
14 citizen and as a juror no matter what the answers may be.

15 I want to take a moment to remind you of some of my
16 prior instructions. As I told you before, a jury's verdict
17 must be based on the evidence produced at trial and must be
18 free from outside influence. Therefore, I remind you again
19 that it is extremely important that you do not discuss the
01:49 20 case, including the jury selection process, with your family,
21 friends, each other, or any other person until either you have
22 been excused or, if selected as a juror, until the case
23 concludes. And, of course, you're not to conduct any
24 independent research about the case online or otherwise and are
25 to avoid reading, watching or listening to any reports in the

1 media about the case.

2 When you signed your questionnaires after you
3 completed them, you signed under an affirmation or oath that
4 you had made the statements -- that they were true and you were
5 making them under the pains and penalties. There's a similar
6 oath or affirmation that will be administered to you now for
7 the questioning that will occur hereafter. And the clerk will
8 ask you to rise so that he may administer that oath.

9 THE CLERK: Will the jurors please rise and raise your
01:49 10 right hand.

11 (Venire sworn.)

12 THE COURT: All right, jurors. Thank you. Withdraw
13 into the room, and we'll have you back one by one to ask you
14 the questions.

15 (The venire left the courtroom at 10:45 a.m.)

16 THE CLERK: Juror No. 612.

17 THE JURY CLERK: Juror No. 612.

18 THE CLERK: Sir, over here, please, if you would.
19 Have a seat.

01:53 20 THE COURT: Good morning.

21 THE JUROR: Good morning.

22 THE COURT: Since you were last here, have you been
23 able to avoid discussing the merits of the case with anyone?

24 THE JUROR: No. I mean, except my boss and, you
25 know --

1 THE COURT: Let me ask -- listen to the question.

2 Have you been able to avoid discussing the merits of the case?

3 THE JUROR: No -- yes -- no. I mean, I had to discuss
4 it with my boss.

5 THE COURT: I see. The merits of the case, I'm not
6 talking about the logistics.

7 THE JUROR: No, no.

8 THE COURT: The substance of the case, have you talked
9 about that?

01:54 10 THE JUROR: No, did not.

11 THE COURT: Just about your having to be here.

12 THE JUROR: Yes.

13 THE COURT: That's understandable. I told you at the
14 time that you can do that.

15 Have you also been able to avoid media accounts?

16 THE JUROR: Yes.

17 THE COURT: So that's the questionnaire that you had
18 when you were here and filled out. We're going to follow up on
19 some of the information you gave us there. Let me begin by
01:54 20 your employment. You're a registered nurse.

21 THE JUROR: Correct.

22 THE COURT: At the Beth Israel Deaconess Medical
23 Center.

24 THE JUROR: Yes.

25 THE COURT: I guess my pages are slightly out of order

1 here.

2 Tell us generally what your duties are as a nurse at
3 that hospital.

4 THE JUROR: I work on the Oncology Department, which
5 is on a -- located on the east campus. And it's -- we call our
6 unit 11 Reisman, but it's pretty much oncology.

7 THE COURT: Okay. What do you do?

8 THE JUROR: I'm a staff nurse. I work 36 hours a
9 week. Today was my scheduled day to work. We had to make a
01:55 10 few switches and all of that.

11 THE COURT: If you were called to be a juror on the
12 case, you know the schedule. We pointed it out in Question 10
13 if you want to take a look. It would be basically Monday
14 through Thursday, 9 to 4.

15 THE JUROR: Correct.

16 THE COURT: Is that something you could adjust your
17 schedule around?

18 THE JUROR: It will be tough on the staff, but -- you
19 know, it will be very difficult because we do the schedule way
01:56 20 ahead. Probably, like, the next three months the schedule is
21 already predone.

22 THE COURT: I'm concerned about you individually, not
23 about how it might impact others. Would you be able to have
24 your 36 hours a week, for example?

25 THE JUROR: Not at work. I will not be able to do

1 every Friday, Saturday, Sunday. I don't think I can do that.

2 THE COURT: Why?

3 THE JUROR: Just because, again, the schedule is
4 predone, and there is people that will be there prefill the
5 shifts. I'm not the schedule coordinator, so I can't -- I
6 don't have control of -- we don't pick and choose the shift.
7 It's done -- you know, we make a request, but somebody else
8 will oversee that.

9 THE COURT: Okay. We asked jurors about their use of
01:57 10 social media. You say you use Facebook a bit.

11 THE JUROR: Yes, Facebook.

12 THE COURT: For mostly personal reasons?

13 THE JUROR: Personal, yeah, social media.

14 THE COURT: Any professional-related use?

15 THE JUROR: No, no, no, not at all.

16 THE COURT: You had -- you've had experience in, I
17 guess, a state case as a juror, a criminal case?

18 THE JUROR: Correct.

19 THE COURT: When was that?

01:57 20 THE JUROR: July of last year, I remember -- if I
21 remember right, yeah.

22 THE COURT: This last July?

23 THE JUROR: Yes.

24 THE COURT: Where was it? What county or --

25 THE JUROR: Suffolk County.

1 THE COURT: So right up at Government Center?

2 THE JUROR: No. It was Roxbury, the courthouse in
3 Roxbury.

4 THE COURT: Okay. All right. Let me ask you to look
5 at Page 77 -- I'm sorry, Page 20, Question 77. It's near the
6 top of the page. It's a multiple part question in which we
7 asked jurors to tell us whether, based on things you'd seen or
8 read in the media or otherwise, you had formed an opinion about
9 whether the defendant was guilty or not or whether he should
01:58 10 receive the death penalty or not. To each of those subparts of
11 the question, you answered you're not sure. Could you tell us
12 about that?

13 THE JUROR: I mean, the question, it's just pretty
14 much what you have read in the news media. It looks like, you
15 know, it was one-way direction. And maybe I would be -- you
16 know, it was just what the media was saying.

17 THE COURT: Right.

18 THE JUROR: But the evidence are pretty much very
19 strong. And I guess I did not form my opinion just based on
01:59 20 that, but there is more evidence, of course.

21 THE COURT: What other evidence than what you saw in
22 the media?

23 THE JUROR: You know, maybe -- it was only one way,
24 the guilty, pretty much. That's it. That's what happened.

25 THE COURT: So you have that impression from the

1 media; is that what you're telling us?

2 THE JUROR: I guess so, yeah. That's --

3 THE COURT: There was a second part to the question
4 which you didn't answer because technically it called for only
5 if you had answered yes. But it did ask whether, if you had
6 formed an opinion -- which I guess you're saying now you did.
7 In other words, the not sure is not exactly --

8 THE JUROR: The way that the question was presented
9 maybe I was not sure, you know.

02:00 10 THE COURT: Will you answer it now that -- as to (a),
11 for example, that you have an opinion that he is guilty?

12 THE JUROR: Yeah, I think he's guilty, yes.

13 THE COURT: So down in the second part of the
14 question, it says, if you had answered yes to any of the
15 questions, would you be able or unable to set aside your
16 opinion and base your decision about guilt only on the evidence
17 produced at trial. You didn't answer that question, but I
18 wonder if you could answer it now.

19 THE JUROR: Can I read the question again, the second
02:00 20 part?

21 THE COURT: Yeah, take your time. Take your time.

22 THE JUROR: Not at this point anymore. I don't think
23 I could be able to do that.

24 THE COURT: You understand, in our criminal justice
25 system, a person is accused of a crime is presumed to be

1 innocent unless the government proves at trial by the evidence
2 that the person is guilty and proves that beyond a reasonable
3 doubt? Do you understand those principles?

4 THE JUROR: I do.

5 THE COURT: Actually, you probably applied them in the
6 criminal case.

7 THE JUROR: Yes.

8 THE COURT: The question would be, in this case,
9 whether you would be able to set aside any impressions you had
02:01 10 from the media or otherwise and listen to the evidence in the
11 case and base your decision about whether the defendant is
12 guilty or not based on that evidence in the case only?

13 THE JUROR: I don't think I could.

14 THE COURT: Okay. Okay. Thank you, sir.

15 THE CLERK: Juror No. 617.

16 THE JURY CLERK: Juror No. 617.

17 THE CLERK: 617, over here, ma'am. Have a seat.

18 THE COURT: Good morning.

19 THE JUROR: Good morning.

02:03 20 THE COURT: Since you were last here, have you been
21 able to avoid discussing the substance of the case with anyone?

22 THE JUROR: Yup.

23 THE COURT: And also avoid media accounts as much
24 as --

25 THE JUROR: As much as I could, yeah. It's kind of

1 hard sometimes.

2 THE COURT: So that's the questionnaire that you
3 filled out. We're going to follow up on some of the
4 information you gave us there. I'd like to first start with
5 your employment. You tell us that you're a self-employed copy
6 editor.

7 THE JUROR: Yes.

8 THE COURT: What does that mean?

9 THE JUROR: That means I read really boring technical
02:03 10 manuals and make sure that everyone else can understand them,
11 you know, check spelling and --

12 THE COURT: Are you -- is this a free-lance kind of
13 thing?

14 THE JUROR: Yes, uh-huh.

15 THE COURT: How do you get your work?

16 THE JUROR: Luckily, I've got a couple of companies
17 that I've done enough work for that they hire me all the time.
18 So it's kind of full time, almost full time.

19 THE COURT: How are you paid? By the piece? By the
02:03 20 time you spend on it?

21 THE JUROR: By the job. It's a flat rate by the job.

22 THE COURT: We had asked -- we had set out earlier in
23 the questionnaire, on Page 5, Section 10 -- Question 10, the
24 schedule that we're going to follow, which will be basically a
25 weekly four-day-a-week, Monday through Thursday, 9 to 4 and so

1 on. And we asked if, on that schedule, you thought you'd incur
2 a substantial hardship if you were called to serve on the case.
3 Given that you're self-employed, would that be an issue for
4 you?

5 THE JUROR: Yeah, it would.

6 THE COURT: Could you tell us how much of one?

7 THE JUROR: I would be missing out on quite a bit of
8 money.

9 THE COURT: What's your usual workweek like?

02:04 10 THE JUROR: That's a good question. Usually, I work,
11 like, five days a week if I have work. Sometimes I don't have
12 work at all. But in this case, I have work coming up in a
13 couple of weeks, and it's going to go for a good six to eight
14 weeks, the work itself.

15 THE COURT: I guess we structured the schedule in part
16 to give people at least one full weekday and then time in the
17 -- later in the day after jury service, maybe in the evenings
18 work on things. Would that help at all?

19 THE JUROR: Yeah. I could work in the evening and on
02:05 20 the weekend.

21 THE COURT: Would you be able to keep up with your
22 work if you did that?

23 THE JUROR: It would be really difficult.

24 THE COURT: How come? Tell us a little bit about
25 that.

1 THE JUROR: Because the work comes in daily, and they
2 expect two sections done a day, so that's 14 sections in one
3 week. And that's a good six hours of work on two pieces. So I
4 would be getting home and working until, like, 11:00 at night
5 and then getting up and coming in here.

6 THE COURT: Content? Okay. Thank you.

7 THE JUROR: Oh, sure.

8 THE COURT: That's it.

9 THE JUROR: That's it?

02:05 10 THE COURT: That's it.

11 THE JUROR: Oh, thank you. Have a nice day. I'm
12 going home.

13 THE CLERK: Juror No. 619.

14 THE JURY CLERK: Juror No. 619.

15 THE CLERK: Ma'am, over here, please, if you would.
16 Have a seat.

17 THE COURT: Good morning.

18 THE JUROR: Good morning.

19 THE COURT: You don't have to get that close but that
02:07 20 was good.

21 Since you were here last, have you been able to avoid
22 discussing the merits of the case with anyone?

23 THE JUROR: No, no. My husband. He's the only one
24 I've told.

25 THE COURT: Told about your being here. I'm talking

1 about the substance of the case.

2 THE JUROR: Oh, no, no.

3 THE COURT: Just about your scheduling here?

4 THE JUROR: Yeah. And just, like, my manager, too. I
5 said I had to go to court.

6 THE COURT: How about have you been able to avoid
7 media reporting about the case?

8 THE JUROR: Pretty much so.

9 THE COURT: Yeah. If you see anything, are you able
02:08 10 to put it away?

11 THE JUROR: Yeah. I'm not reading it, no.

12 THE COURT: Tell us about your employment.

13 THE JUROR: I work in Shaw's Supermarket.

14 THE COURT: Yeah.

15 THE JUROR: What I do?

16 THE COURT: Yeah.

17 THE JUROR: Produce clerk in Shaw's Supermarket.

18 THE COURT: So what does that involve?

19 THE JUROR: Cutting up fruit and doing all that stuff.
02:08 20 I don't know if you know. We have new owners, and they're
21 just, like, ridiculous with all the stuff. They cut the help,
22 and they want you to do this, that, and -- yeah.

23 THE COURT: How are you paid? On an hourly basis?

24 THE JUROR: Yes.

25 THE COURT: We set out the schedule earlier in the

1 form. If you want to look at it, it's on Page 5 in Question
2 10. In summary, we plan to be on a 9-to-4 schedule, Monday
3 through Thursday. That will last for several months likely.
4 How would that affect you and your employment?

5 THE JUROR: Financially, I couldn't do it, no, because
6 my work only pays three days. They only pay me three days jury
7 duty and that's it.

8 THE COURT: What's your usual weekly schedule like?

9 THE JUROR: I usually work between 30 and 33 hours a
02:09 10 week.

11 THE COURT: What days?

12 THE JUROR: I have Thursdays and Saturdays off. So
13 Sunday through -- yup.

14 THE COURT: Okay. Any issue? Okay. Thank you.
15 That's it.

16 THE JUROR: That's it?

17 THE COURT: Yup.

18 THE JUROR: Okay.

19 THE CLERK: Juror No. 621.

02:10 20 THE JURY CLERK: Juror No. 621.

21 THE CLERK: Sir, over here, please. Have a seat.

22 THE COURT: Good morning.

23 THE JUROR: Your Honor. How are you?

24 THE COURT: Good. Have you been able to avoid any
25 discussion of the merits of the case with anyone since you were

1 last here?

2 THE JUROR: I have been, yeah.

3 THE COURT: How about avoiding media reports about the
4 case?

5 THE JUROR: Headlines, no; details, yes.

6 THE COURT: Okay. You've been able to ignore it if
7 you saw that it was about this case.

8 THE JUROR: To the best of my knowledge of it, yes.

9 THE COURT: Tell us about your work, what you do and
02:11 10 so on.

11 THE JUROR: I'm an internal auditor for State Street.
12 I basically assess processes for risk and try to find the
13 controls that mitigate them and prove their existence or
14 effectiveness and report it to the board and senior management
15 of the company.

16 THE COURT: You've been doing that for several years?

17 THE JUROR: Three years, nine months.

18 THE COURT: I think you told us -- this is later in
19 the questionnaire, on Page 26, Question 98 -- that you travel
02:11 20 extensively for work. Can you tell us about that?

21 THE JUROR: Correct, yes. I do travel for work
22 because we are centralized out of Boston, and we do have
23 offices across the globe. I was just in China. I do have to
24 go to a conference in South Florida for anti-money laundering,
25 March 16th through the 18th.

1 THE COURT: Any others that you can predict at this
2 point?

3 THE JUROR: Potentially London in June. That's still
4 to be determined.

5 THE COURT: Okay. We asked about Facebook or social
6 media use. You post a little bit; you send happy birthday
7 wishes and things like that.

8 THE JUROR: Happy birthday wishes and where I am,
9 that's about it.

02:12 10 THE COURT: And some also, I guess rare, you say,
11 Twitter and Instagram.

12 THE JUROR: Very seldom.

13 THE COURT: Yeah, okay. You told us that your father,
14 some time ago, was an assistant U.S. attorney?

15 THE JUROR: That's correct, in South Florida.

16 THE COURT: South Florida.

17 THE JUROR: Uh-huh.

18 THE COURT: Do you know whether his concentration was
19 on criminal matters or civil matters?

02:12 20 THE JUROR: Not a hundred percent sure.

21 THE COURT: Okay. We asked some interesting personal
22 data, and we see that your grandmother, you said, was Muslim.

23 THE JUROR: Correct.

24 THE COURT: It's put in the past tense. Is she
25 deceased?

1 THE JUROR: She's deceased.

2 THE COURT: Did you know her?

3 THE JUROR: Yeah, I knew her.

4 THE COURT: I mean, sometimes -- one of my
5 grandmothers had passed before I was born. That's why I asked.

6 How was your relationship with her? Tell us about her
7 background. Where was she from originally?

8 THE JUROR: She was from Guyana originally. At the
9 time it was a British colony. Then they migrated up to North
02:13 10 America, and that's really about it. I don't really know much
11 about her work experience or job responsibilities, but she was
12 a mother of ten.

13 THE COURT: Your father's side or your mother's side?

14 THE JUROR: Mother's side.

15 THE COURT: Let me ask you to turn to Page 20 of your
16 questionnaire, Question 77, near the top.

17 THE JUROR: Yup.

18 THE COURT: In that question, we asked whether, based
19 on things you'd seen or read in the news or else -- from other
02:14 20 sources, you'd formed an opinion about certain matters, whether
21 the defendant was guilty or not, whether he should receive the
22 death penalty or not. You checked "yes." Let's just focus on
23 (a) and (b) for a minute. You checked "yes," you had an
24 opinion that he was guilty; and, no, that you do not have an
25 opinion that he was not guilty. You similarly answered (c) and

1 (d) about the penalty. Below that, we asked, if you had
2 answered yes to any of the questions, as you did to (a) and
3 (c), would you be able or unable to set aside your opinion and
4 base your decision about the guilt and punishment solely on the
5 evidence presented in court? And you checked the box "able."

6 THE JUROR: I think I would be able to, but I do have
7 my prenotions. I would require a severe amount of convincing.

8 THE COURT: You understand, in our criminal justice
9 system, that a person accused of a crime is presumed to be
02:15 10 innocent of a crime.

11 THE JUROR: Understand.

12 THE COURT: Unless the government --

13 THE JUROR: Proves guilty.

14 THE COURT: -- proves the person guilty at trial by
15 the evidence produced at trial and proves that beyond a
16 reasonable doubt. Do you think you would have difficulty
17 applying those principles in this case?

18 THE JUROR: I think potentially, yes.

19 THE COURT: You think you would require the defendant
02:15 20 to prove that he wasn't guilty?

21 THE JUROR: Guilty of the crime? That would require a
22 lot to prove not guilty.

23 THE COURT: Okay. Okay. Thank you.

24 THE JUROR: Thank you.

25 THE CLERK: Juror No. 623.

1 THE JURY CLERK: Juror No. 623.

2 THE CLERK: Sir, over here, please. Have a seat.

3 THE COURT: Good morning.

4 THE JUROR: Morning.

5 THE COURT: Since you were last here -- you can adjust
6 it, sure. Since you were last here, have you been able to
7 avoid talking about the merits of the case with anyone?

8 THE JUROR: Yes.

9 THE COURT: And have you, as well as you could,
02:17 10 avoided media accounts of what's -- about the case or
11 proceedings here?

12 THE JUROR: I think so, yes.

13 THE COURT: Okay. We have the questionnaire that you
14 filled out. We're going to follow up on some of the
15 information you gave us there. Why don't you tell us about
16 your employment.

17 THE JUROR: I work at Boston Scientific. I'm an
18 engineer.

19 THE COURT: What -- tell us a little bit --

02:18 20 THE JUROR: I work in the Equipment Maintenance Group,
21 and we support the research and development laboratories there.
22 I generate procedures to validate equipment so that the data
23 generator from that equipment can be used to support regulatory
24 findings for submissions for medical devices.

25 THE COURT: You've -- we asked -- if you want to

1 follow along, this is on Page 10. You said you have --
2 Question 28, we asked about whether you'd published, and you
3 said -- you put "scientific papers and patents." Can you give
4 us a little information about that?

5 THE JUROR: Well, from the time that I was in graduate
6 school, I've written a number of papers submitted to scientific
7 journals. Mostly been biochemistry, describing immobilized
8 enzymes. I've generated patents for similar things to be
9 applied to medical devices. I've contributed technical work to
02:19 10 publications for enzyme -- or controlled delivery -- controlled
11 drug delivery devices. There was a company in Cambridge called
12 Alchemy. I did a lot of work where we developed a product that
13 was designed to treat children of short stature with human
14 growth hormones so that they could get an injection once a
15 month rather than every day or whatever the more frequent
16 protocols required. There's patents that I've written --
17 that's a little bit of an overstatement maybe. I have the
18 ideas, and then the company I work with now, Boston Scientific,
19 has a group, a legal group, that helps put those into a form
02:20 20 that can be submitted for a patent application.

21 THE COURT: Are you listed as an inventor on patents?

22 THE JUROR: Yes.

23 THE COURT: How many?

24 THE JUROR: Two at this point. I have several
25 applications.

1 THE COURT: What are the subject matters?

2 THE JUROR: One of them is immobilized enzymes on the
3 surface of a medical device in the -- the enzyme would be used
4 to catalyze the reaction or treatment of some medical
5 conditions. So, for example, you could have an enzyme attached
6 to a stent that would degrade cholesterol. Someone that -- I
7 mean, some of these things wouldn't actually work, but there
8 are -- it would take quite a bit of development to actually get
9 something like that to work. That would be the sort of the
02:20 10 things that would be --

11 THE COURT: You have some pending as well?

12 THE JUROR: Yes.

13 THE COURT: Similar area?

14 THE JUROR: Similar, yeah, medical device and
15 biochemistry --

16 THE COURT: Biochemical interface?

17 THE JUROR: Yes.

18 THE COURT: Okay. Let me just -- before we go on
19 about you, we asked a little family information. You tell us
02:21 20 your wife is retired. What field of work was she in?

21 THE JUROR: She was a medical transcriptionist for the
22 State of Rhode Island, and then she worked for the Department
23 of Environmental Management in Rhode Island for the
24 Investigative Division. So they would investigate the toxic
25 waste dumps that people did in.

1 THE COURT: Okay. Back to you and back to Page 10.
2 At the bottom we asked about posting messages on websites or
3 blogs or things like that. And I guess you say you use
4 Facebook for personal matters and LinkedIn for professional
5 matters as well, I guess. Is that pretty much a summary?

6 THE JUROR: Yeah.

7 THE COURT: On Page 14 now, Question 43, we asked
8 whether you or family member or a close friend had ever been
9 treated unfairly by a law enforcement officer. You wrote,
02:22 10 "Foster son harassed by police." Can you tell us a little bit
11 about that?

12 THE JUROR: I had a -- we had a foster son who stayed
13 with us for about five years. He was Haitian. He was placed
14 with us when he was a teenager, and he had had no real parental
15 involvement until that time, so he was kind of a challenge.
16 But, you know, he got older. And then I know that we were in a
17 neighborhood where we were the only Caucasians. So we were
18 kind -- we kind of stood out. You just see things that happen
19 to people, sort of like what's in the news today. You know, I
02:23 20 knew [REDACTED], and, you know, I knew the circumstances that he may
21 have been in at the time. And, you know, the police would just
22 -- just picked them out and bother them just because they were
23 -- I don't know. The term that people use now is "driving
24 while being black."

25 THE COURT: Would any of those experiences or feelings

1 interfere with your ability to be a fair juror in a case where
2 the prosecution is presenting evidence through police officers?

3 THE JUROR: I don't think so. I mean, I don't think
4 -- that doesn't seem to be relevant to this.

5 THE COURT: Okay. Let me ask you to turn to Page 20,
6 Question 77, near the top. It's a multiple part question. We
7 asked whether, based on things you'd seen or read in the news
8 or learned from other sources, had you formed an opinion about
9 various matters, (a), whether the defendant was guilty, and you
02:24 10 said "yes"; and (c) and (d) about the death penalty. Let me
11 ask you particularly about question Subpart (a). If you see
12 down below, the question goes on. "If you answered yes, to any
13 of these questions, would you be able or unable to set aside
14 your opinion and base your decision about guilt based solely on
15 the evidence presented to you in court?" And you selected
16 "able." Could you tell us about that?

17 THE JUROR: Well, in reading that question, it seemed
18 to me that the question had to do with whether he was guilty or
19 not and not about the consequences of guilt. And, you know,
02:25 20 I'm not sure -- so that's how I answered it.

21 THE COURT: Right. So the question is -- it's not
22 surprising that given the coverage of this -- these events that
23 people have ideas and impressions about what happened and who's
24 responsible. The question is whether, if you were a juror in
25 the case, you would be able to put those to the side and decide

1 the issues in the case based on the evidence produced in the
2 course of the trial and not on preconceived ideas about guilt
3 or not or appropriateness of a particular punishment or not.
4 So I'm not sure --

5 THE JUROR: I'm not sure. I said I am guessing that I
6 can. It's kind of -- after reading this and thinking about it
7 after that on that day, it seemed like kind of an intangible
8 thing. There's no real measure of whether you can or not. You
9 just say you can or -- I don't know.

02:26 10 THE COURT: Right. I think you told us -- these pages
11 are out of order. Actually, I'm missing Page 15.

12 MR. WEINREB: It's, I believe, later on.

13 THE COURT: I see it. Thanks.

14 You say you sat on a state jury case for a drug
15 dealer. Do you remember when that was?

16 THE JUROR: It was when I lived in Rhode Island,
17 probably it was 1989.

18 THE COURT: Okay. At any rate, I expect you
19 understand that in our criminal justice system a person accused
02:27 20 of a crime is presumed to be innocent unless and until the
21 government proves that he's guilty by the evidence at trial and
22 proves that beyond a reasonable doubt. What we ask jurors to
23 do, even if they have an impression about guilt or innocence
24 going in, we ask them to put aside that -- those thoughts and
25 pay attention to the evidence produced at the trial and make a

1 decision based solely on that body of evidence.

2 The government has the burden of proof to prove that a
3 person is guilty. A person accused of a crime never has any
4 burden to prove he's not guilty. In other words, it's not a
5 question of which side has convinced me. It's has the
6 government convinced me that he's guilty of what he's charged
7 with? Do you think that, if you were a juror in this case, you
8 would be able to do that notwithstanding the fact that you have
9 some impressions from the media?

02:28 10 THE JUROR: I think so, yeah.

11 THE COURT: If, in particular, with respect to any of
12 the particular charges, if you thought, after considering all
13 the evidence that as to a particular charge you were not
14 convinced beyond a reasonable doubt that the defendant had
15 committed that offense, would you be able to find him not
16 guilty of that offense?

17 THE JUROR: I think so. I was -- had imagined that
18 some other events could be presented that hasn't been in the
19 news, and that might say that he wasn't guilty.

02:28 20 THE COURT: Or --

21 THE JUROR: So you would have to --

22 THE COURT: My question is whether the government's
23 evidence might not just be convincing enough on any particular
24 charge.

25 THE JUROR: It's possible.

1 THE COURT: If you were in that condition, would you
2 be able to vote not guilty on that?

3 THE JUROR: I hadn't really thought about it in that
4 way. But if I say that I can set aside whatever I've heard to
5 this point in time, then I would have to say yes to that
6 question.

7 THE COURT: Okay. We asked -- this is on 21. Again,
8 the pages got jumbled a little bit. I don't know if it's in
9 your copy. It's Question 82, whether you had participated in
02:29 10 any of the post-event support activities that people had been
11 doing. And you said you think you made a donation to the One
12 Fund.

13 THE JUROR: Yeah.

14 THE COURT: When was that?

15 THE JUROR: Shortly after the event. That had been
16 talked about a lot in the news. And I didn't go back to look
17 and see if I did or not, but I'm pretty sure that I did.

18 THE COURT: Question 85, you recognized a name on the
19 list, No. 314. I have the list here if you want to look at it.

02:30 20 THE JUROR: Yeah. When I was looking over this
21 list -- I know a lot of athletes and a lot of people I know
22 that run. I thought that maybe I would see someone's name in
23 there. And I don't know if this person is a competitor but --
24 I don't know if it's the same person, but there's somebody from
25 work that has that same name.

1 THE COURT: Somebody who works at --

2 THE JUROR: He's not there now, but I worked with him.

3 THE COURT: Okay. How closely do you know him?

4 THE JUROR: I knew him name, and we were on some
5 groups together. I didn't really ever have a lot of
6 interaction with him other than at meetings.

7 THE COURT: Is it the kind of person you would give
8 extra weight to his testimony over other witnesses just because
9 you've had the past experience with him?

02:31 10 THE JUROR: Probably, because I know -- if it's -- if
11 that was the person that came up, I know him, and I know his
12 work.

13 THE COURT: You talked about running competitively.
14 Do you do that?

15 THE JUROR: No.

16 THE COURT: Or did you?

17 THE JUROR: No.

18 THE COURT: No. How do you know people who do that?

19 THE JUROR: Well, I do a lot of bike riding, and I
02:31 20 know a lot of other endurance athletes. I know people who have
21 run the Marathon.

22 THE COURT: But you haven't?

23 THE JUROR: No.

24 THE COURT: Beginning on Page 23, we asked a series of
25 questions to gauge potential jurors' ideas about the death

1 penalty. In Question 88, we asked a general question. Do you
2 have any general views about it? And you said, "Against using
3 the death penalty." Do you want to explain that a little bit?

4 THE JUROR: Yes. I've always -- well, as long as --
5 since I've read about it, I've been against it. I don't think
6 it's -- you can't undo it. That's just wrong, I think, for the
7 state to do it. I don't know. I don't really have a -- I've
8 never really had an opportunity to talk about it, and I'm not
9 sure if I have coherent thoughts about it. But I just don't
02:32 10 think that it's right for the state to do the same thing to the
11 person found guilty as the person had done himself.

12 THE COURT: Okay. In the next question, 89, we asked
13 you to put yourself on a scale from 1 to 10 where 1 was
14 strongly opposed, reflecting a belief that the death penalty
15 should never be imposed; and 10, on the other hand, reflects a
16 belief it should be imposed whenever a defendant has been
17 convicted of an intentional murder. You selected 2. Can you
18 tell us what you thought as you did that?

19 THE JUROR: I guess I'm thinking someone that's
02:33 20 strongly opposed that would be writing editorials to the
21 newspaper and conducting a campaign against it.

22 THE COURT: Actually, it's a defined term. If you
23 look above, it says --

24 THE JUROR: Maybe I didn't read it carefully.

25 THE COURT: It says, "1 reflects a belief that the

1 death penalty should never be imposed." And I guess that means
2 under any circumstances. And 10 represents the opposite, sort
3 of absolute, view that it should always be imposed when someone
4 has been convicted of murder. So in light of that, could you
5 explain your thinking behind choosing No. 2?

6 THE JUROR: So it might look like there are some
7 situations when I would find it acceptable? Is that the --

8 THE COURT: That's what I'm asking. Do you think
9 that's the case or not?

02:34 10 THE JUROR: I suppose there's maybe a case out there,
11 but I haven't seen it. I mean, I haven't seen everything so --

12 THE COURT: Let's look at the next page. Here we
13 asked it not in numbers but in words. There were a series of
14 statements proposed, and we asked if you could tell us if there
15 was one that represented your view. Why don't you take a
16 minute to read through all of them, and then we'll talk about
17 --

18 THE JUROR: Question 90?

19 THE COURT: Question 90, yeah. After you've read
02:34 20 through, we're going to ask about your selection.

21 THE JUROR: I don't know. I think (b) is still the
22 right answer.

23 THE COURT: Okay, that you are opposed to it and would
24 have a difficult time voting to impose it even if the facts
25 supported it.

1 THE JUROR: Yeah.

2 THE COURT: In the next question, we asked if your
3 views had changed over ten years, and you wrote "more opposed."
4 Does that mean you grew more opposed to the death penalty over
5 the last ten years?

6 THE JUROR: Yeah, I think so.

7 THE COURT: Can you tell us why you think you --

8 THE JUROR: I guess I can think of one example and it
9 was probably recently. They are having a hard time actually
02:36 10 administering the death penalty. The states can't find the
11 drug cocktails to actually do it. And it seems like it's in
12 some ways it's a theoretical thing. If they can't actually
13 kill somebody, how can you actually assign it? What's the
14 point of assigning it if you can't execute it?

15 THE COURT: Just to finish up, look at the bottom of
16 Page 25, Question 95. We asked, if you found this defendant
17 guilty and you decided the death penalty was the appropriate
18 punishment for him, could you conscientiously vote for the
19 death penalty? And you answered "no."

02:37 20 THE JUROR: Yeah. I mean --

21 THE COURT: Let me -- before I ask you to explain
22 that, let me call your attention to Question 99, where you
23 wrote -- this was, "Did you have any problems reading or
24 understanding the questionnaire?" And you wrote, "Question 95
25 seemed contradictory." Do you remember what --

1 THE JUROR: Yeah. I remember writing that. I'm not
2 sure if I was fatigued from answering all those questions. Let
3 me read it again.

4 Yeah. It seemed contradictory because, if you decide
5 the death penalty was the appropriate punishment, if it was the
6 right thing to do, then that's the same as voting for it. You
7 can't vote for something that you think that is a wrong thing
8 to do.

9 THE COURT: So -- right. So you answered "no,"
02:38 10 though. So --

11 THE JUROR: All right.

12 THE COURT: Were you rejecting the premise? Is that
13 what --

14 THE JUROR: Yeah.

15 THE COURT: You didn't think you could find it was the
16 appropriate punishment; is that what you're saying?

17 THE JUROR: I guess there's probably two ways you
18 could answer this. Could I vote for the death penalty? No.
19 And would I ever decide that this was the appropriate
02:38 20 punishment, would be no.

21 THE COURT: All right. Follow-up?

22 MR. WEINREB: Good morning.

23 THE JUROR: Good morning.

24 MR. WEINREB: My name is Bill Weinreb. I'm one of the
25 prosecutors.

1 So if you don't mind, I just want to follow up on a
2 couple things you just said.

3 THE JUROR: Sure.

4 MR. WEINREB: So with respect to Question No. 95, did
5 I understand you correctly that, regardless of which way you
6 interpreted it, your answer to that would be no?

7 THE JUROR: Yes.

8 MR. WEINREB: Meaning that you couldn't find that it
9 was the appropriate penalty, correct?

02:39 10 MS. CONRAD: Objection.

11 THE COURT: No. Go ahead.

12 THE JUROR: I don't think I would change what I said.
13 I think the ways I looked at it are -- so the answer is no.

14 MR. WEINREB: No to Question 95?

15 THE JUROR: I'm not sure I understand your --

16 MR. WEINREB: Let me just ask the question right out.
17 Could you conscientiously -- here we're talking about not as a
18 theoretical possibility but as an actual reality. Could you
19 ever find that it was the right thing to do, to impose the
02:39 20 death penalty on another human being?

21 THE JUROR: No.

22 MR. WEINREB: And if, theoretically, intellectually,
23 you decided it was appropriate, could you take the next step
24 and actually vote to put someone to death?

25 THE JUROR: No.

1 MR. WEINREB: I have nothing further.

2 MS. CONRAD: No questions. Thank you.

3 THE COURT: Thank you very much, sir. That's it.

4 Just leave the questionnaire there.

5 THE CLERK: 628.

6 THE JURY CLERK: Juror No. 628.

7 THE CLERK: Sir, over here, please. Have a seat.

8 THE COURT: Good morning.

9 THE JUROR: Good morning.

02:41 10 THE COURT: Since you were last here, have you been
11 able to avoid talking about the merits of the case with anyone?

12 THE JUROR: Yes.

13 THE COURT: And, as best as you could, have you been
14 able to put aside or avoid media reports about the case?

15 THE JUROR: Yes.

16 THE COURT: So we're going to ask you about some of
17 the things you wrote in the questionnaire just to follow up on
18 some of the answers you gave.

19 THE JUROR: Okay.

02:42 20 THE COURT: Actually, let's start with a short
21 sidebar, if we could.

22 (SIDEBAR CONFERENCE AS FOLLOWS:

23 THE COURT: Are the other two --

24 MR. WEINREB: These are members of the U.S. Attorney's
25 Office.

A horizontal bar chart titled 'Do you have a job?' showing the percentage of respondents for each age group (1-25) who answered 'Yes'. The y-axis lists age groups from 1 to 25. The x-axis represents the percentage, ranging from 0 to 100. The bars are black and their lengths correspond to the percentage of 'Yes' responses for each age group.

Age Group	Percentage of 'Yes' Responses
1	~85%
2	~95%
3	~98%
4	~95%
5	~95%
6	~35%
7	~85%
8	~35%
9	~95%
10	~98%
11	~98%
12	~95%
13	~95%
14	~65%
15	~55%
16	~85%
17	~90%
18	~98%
19	~85%
20	~75%
21	~65%
22	~45%
23	~70%
24	~98%
25	~70%

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. . . END OF SIDEBAR CONFERENCE.)

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THE COURT: Right. Okay.

THE CLERK: Juror No. 634.

THE JURY CLERK: Juror No. 634.

THE CLERK: Ma'am, over here, please, if you would.

Have a seat.

THE COURT: Good morning.

THE JUROR: Good morning, Judge.

THE COURT: Since you were last here, have you been able to avoid talking about the merits or the substance of the case with anyone?

THE JUROR: Yes, I have.

THE COURT: Have you been able to, as best you could,

1 to avoid media reporting about the case?

2 THE JUROR: Yes, I have.

3 THE COURT: All right. Tell us about your work.

4 THE JUROR: I work at -- when you say tell you about
5 my work, meaning?

6 THE COURT: What do you do?

7 THE JUROR: I'm a receptionist/administration.

8 THE COURT: At a law firm?

9 THE JUROR: Yes.

02:48 10 THE COURT: You've been doing that for quite awhile?

11 THE JUROR: Fifteen years. And I was told to let you
12 know that when I spoke to you.

13 THE COURT: Which?

14 THE JUROR: To let you know that I work for a law
15 firm.

16 THE COURT: Right. We had that in the -- you told us
17 that in the form. Does that indicate that the firm is
18 concerned about your serving as a juror?

19 THE JUROR: Not at all. The fact that I was told to
02:49 20 mention that I work for a law firm that is representing the
21 little boy's family. And I did not know that because I'm in
22 administration. I'm not --

23 THE COURT: You're talking about Martin Richard?

24 THE JUROR: The little boy, yes, sir. And I was told
25 to let you know that. That's not something I -- through

1 whispers, through the firm --

2 THE COURT: That's an important thing for us to know.

3 THE JUROR: It's very important.

4 THE COURT: Thank you very much. That's it.

5 THE JUROR: Okay.

6 THE CLERK: Juror No. 637.

7 THE JURY CLERK: Juror No. 637.

8 THE CLERK: Sir, over here, please. Have a seat.

9 THE COURT: Good morning.

02:51 10 THE JUROR: Good morning, Judge.

11 THE COURT: Since you were last here, have you been
12 able to avoid talking about the substance of the case with
13 anyone?

14 THE JUROR: Yes, I have. I've avoided it.

15 THE COURT: And also avoid media reporting about the
16 case?

17 THE JUROR: Yes, I have. I've avoided it.

18 THE COURT: Turn it to the side?

19 THE JUROR: I turn it to the side, yes, sir.

02:51 20 THE COURT: Okay, great. We have the form that you
21 filled out. We're going to follow up on some of the
22 information that you gave us there.

23 THE JUROR: Okay.

24 THE COURT: We see that you're a teacher.

25 THE JUROR: Yes, sir.

1 THE COURT: And you indicated that -- in the question
2 about whether it would be a difficult thing for you to serve,
3 you indicated you would not have any hardship beyond the usual
4 in serving, is that correct?

5 THE JUROR: This would not be a hardship for me.

6 THE COURT: Your wife is a nurse?

7 THE JUROR: Yes.

8 THE COURT: Where does she practice her nursing?

9 THE JUROR: She works at Rhode Island Hospital.

02:51 10 THE COURT: Rhode Island Hospital. Is that in
11 Providence, Pawtucket?

12 THE JUROR: It is, yes.

13 THE COURT: Providence?

14 THE JUROR: Providence. I'm sorry.

15 THE COURT: How many years has she been there?

16 THE JUROR: Over 20. She's been there for a few.

17 THE COURT: Any specialty?

18 MR. BRUCK: She works on the neurosurgical floor so
19 brain aneurysms, anything dealing with the brain or the spine.

02:52 20 THE COURT: As a staff nurse on the floor?

21 THE JUROR: Yes, sir.

22 THE COURT: You're a graduate of UMass Dartmouth?

23 THE JUROR: Yes, sir.

24 THE COURT: What year?

25 THE JUROR: I have to stop and think because I took a

1 little extra time. I believe 1991, 1992.

2 THE COURT: You know that there's some involvement of
3 UMass Dartmouth and its personnel in the case?

4 THE JUROR: Yes, I do.

5 THE COURT: As an alumnus, would that cause you any
6 difficulty about being an impartial juror?

7 THE JUROR: No, sir, it wouldn't.

8 THE COURT: We've asked people about social media.
9 You seem to use Facebook but not very often.

02:52 10 THE JUROR: That's correct.

11 THE COURT: Any others?

12 THE JUROR: I recently deleted my Twitter account
13 after it was made apparent that some of my students were going
14 on there to see my postings. So I -- upon the request of my
15 principal, I deleted that account. It was nothing bad, but I
16 just --

17 THE COURT: When was that?

18 THE JUROR: A couple of months ago. But I normally --

19 THE COURT: Prior to that, how did you use your
02:53 20 Twitter account?

21 THE JUROR: Basically to look up information about
22 sports or entertainment or things like that.

23 THE COURT: Okay. Let me ask you to turn to Page 20,
24 Question No. 77, near the top.

25 THE JUROR: Can I take that off?

1 THE COURT: Sure, absolutely.

2 THE JUROR: Which question?

3 THE COURT: Question 77 near the top.

4 THE JUROR: Okay.

5 THE COURT: It's a multipart question. We asked,
6 based on things you'd seen or heard in the media you'd formed
7 an opinion about the various matters.

8 THE JUROR: Yes, sir.

9 THE COURT: Whether the defendant was guilty or not
02:54 10 and whether he should receive the death penalty or not.

11 THE JUROR: Yes, sir.

12 THE COURT: As to Part (a), you indicated that, yes,
13 you had formed an opinion about his guilt.

14 THE JUROR: That's just the information I received
15 from the media. That's what -- the opinion I formed, yes.

16 THE COURT: As to the death penalty, you said
17 "unsure," "unsure," as to either alternative there.

18 THE JUROR: Would you like me to speak on that?

19 THE COURT: We'll come to that. I want to focus on
02:54 20 the first one first. You answered "yes" to Part (a).

21 THE JUROR: Yes, sir.

22 THE COURT: Further down we asked, "If you answered
23 yes to any of these questions, would you be able or unable to
24 set aside your opinion and base your decision about," in this
25 instance, "guilt solely on the evidence that would be presented

1 to you in court?" And you checked "able."

2 THE JUROR: Yes, I would.

3 THE COURT: Can you tell us about that?

4 THE JUROR: The information that I received from the
5 media is all that I had, and I never really took into account
6 that I would be asked to either use or not use that
7 information. So just from what I received, that's what I
8 believed.

9 Upon being called upon for jury service, I realized
02:55 10 that there's more to the case, and I would have to see that in
11 order to really understand what's going on before I could
12 actually make a -- form an opinion on that.

13 THE COURT: I'm sure you appreciate that in our
14 criminal justice system a person accused of a crime is presumed
15 to be innocent of the charged crime unless and until the
16 government proves the person guilty beyond a reasonable doubt
17 by the evidence at trial. You're familiar with those
18 principles?

19 THE JUROR: Yes, sir. I'm familiar with them, yes.

02:56 20 THE COURT: What we ask jurors to do, if they have
21 some idea before sitting as a juror, to put those ideas aside
22 and to face -- to concentrate only on the evidence produced in
23 the trial and make the judgments based on that body of
24 information and not on what they think they might have heard
25 from other places.

1 THE JUROR: Yes, sir.

2 THE COURT: Is that something you think you would be
3 able to do?

4 THE JUROR: I do.

5 THE COURT: You understand that a defendant never has
6 any burden to prove he's not guilty of what he's charged with.
7 The government always has the burden to prove guilt. It's up
8 to the government to prove that. If it does, it's entitled to
9 a verdict of guilty. But if it doesn't prove guilt beyond a
02:56 10 reasonable doubt, the defendant is entitled to be acquitted.
11 If that were the case on any particular charges, that you
12 thought the government had not carried its burden of proof,
13 would you be able to find the defendant not guilty as to that
14 matter?

15 THE JUROR: I believe I would, yes.

16 THE COURT: In the next question, you said -- you
17 mentioned your wife. You're against the death penalty but not
18 sure if you would still be, meaning in this case -- is that
19 with reference to this case or generally?

02:57 20 THE JUROR: I believe that would be generally. I --
21 personally, I don't feel that the death penalty is morally
22 right. But, once again, I've never really been called upon to
23 demonstrate that or asked to support that. So I don't really
24 know how I would vote in that situation or what the
25 circumstances would be. I would hope that I would follow the

1 guidelines that I feel -- that I put down there, but I really
2 can't say until I see all the evidence.

3 THE COURT: Let's go to Page 23. Question 88,
4 beginning there, we asked a series of questions about the death
5 penalty. In Question 88, we asked a general question. If you
6 have general views about the death penalty, what are they? You
7 said, "Ethically, I'm against the death penalty, but I don't
8 know how I would vote after this trial." And I guess that's
9 somewhat ambiguous because it could mean you might change your
02:58 10 general views about the death penalty, or it could mean you
11 have some idea about how you might approach the question in
12 this trial specifically apart from your general views. Could
13 you help us with what you were thinking?

14 THE JUROR: Yeah. As far as the death penalty goes,
15 I -- as I stated before, I feel that it's wrong. But I really
16 don't know, after seeing the evidence of what's happened,
17 whether or not that will be tested. Once again, I'd like to
18 hope that I will follow through on what I originally feel, but
19 I -- I cannot honestly say that I'm going to vote one way or
02:59 20 another.

21 THE COURT: In the next question, 89, we asked you to
22 place yourself on a numerical scale where 1, strongly opposed,
23 represents a belief that the death penalty should never be
24 imposed under any circumstances; and 10, on the other hand,
25 would be a belief that it should be imposed whenever a

1 defendant is convicted of intentional murder. You put yourself
2 at 3. Can you explain that? It's a little hard to explain a
3 numerical scale.

4 THE JUROR: But I understand what you're saying. If I
5 were to do this scale without these proceedings, I probably
6 would have gone a lot higher towards -- actually, I have to
7 stop and take a look. I probably would have gone a lot lower
8 than 3. With these proceedings, once again, I feel it's more
9 I'm going to be tested. I hope, if the situation does come up,
03:00 10 that I will follow what I feel is right. But I can't give you
11 a definite answer of, yes, I'll go one way or the other.

12 THE COURT: Let's go to Page 24 and Question 90. That
13 question set forth a series of possible views about the death
14 penalty and whether a person could support it or not. We asked
15 -- why don't you take a minute to read through all of the
16 options. We asked you to select one you thought applied to
17 you. You made a selection. After you've reviewed them all,
18 let's talk about that.

19 THE JUROR: Okay.

03:01 20 THE COURT: So you selected (c). Do you think that
21 still represents your view the best of the options presented?

22 THE JUROR: After reviewing the options and having
23 more time to contemplate this, I would probably today have
24 selected letter (b).

25 THE COURT: So (b) is, "I'm opposed to the death

1 penalty and would have a difficult time voting to impose it
2 even if the facts supported it."

3 THE JUROR: That's correct.

4 THE COURT: That's different from what you selected,
5 which was, you thought you could vote for it if you believe the
6 facts and the law in the particular case called for it. So you
7 think that is not fully representative of your thinking on the
8 matter?

9 THE JUROR: I would go with (b). I think it's -- it
03:01 10 would be a difficult decision either way. And I really don't
11 feel that it would be fair for me to say I'm ruling out
12 anything.

13 THE COURT: You're not choosing (a), which is the
14 never question?

15 THE JUROR: That's correct.

16 THE COURT: In no case.

17 So I guess the question is: Are you realistically
18 open to voting to impose it, or are you sort of hypothetically
19 open to it or uncertain or -- I'm trying to gauge. This is
03:02 20 fine grading, obviously, between (a), (b), and (c). We're just
21 trying to understand where your thinking is.

22 THE JUROR: Honestly, as an English teacher, I'm
23 afraid of the word "never." I don't think that there's a
24 situation where the word "never" could really come into play as
25 an English teacher. That just automatically -- I rule that out

1 automatically. It is between (b) and (c). Really it's a close
2 line. After thinking about this -- and I have thought about
3 it -- I would probably lean more towards (b), that it would be
4 very difficult. But, once again, I can't rule it out.

5 THE COURT: Let me ask you to look at Page 25,
6 Question 95.

7 THE JUROR: Okay.

8 THE COURT: In that question, we said -- asked, if you
9 found the defendant guilty and if you thought the death penalty
03:03 10 was the appropriate punishment for him, could you
11 conscientiously vote for the death penalty? And you wrote "not
12 sure." Tell us a little bit about that.

13 THE JUROR: I believe that answer still holds true. I
14 really -- until I am faced -- until I face that road, I can't
15 honestly tell you which way I would go. Once again, ethically,
16 I would hope that I would lean towards not implementing the
17 death penalty; but until I get to that point, I really can't
18 say.

19 THE COURT: So you're an English teacher, so you'll
03:04 20 note that the question is a little awkward because one of the
21 premises is that you decided the death penalty was appropriate,
22 and then the question was could you conscientiously vote for it
23 under that circumstance.

24 THE JUROR: Are you asking me to correct the grammar
25 or understand the question?

1 THE COURT: It presents -- it sort of asks you to
2 accept that you've made a decision, and then asks whether you
3 can execute on it, I guess, is really what it's asking.

4 THE JUROR: I see. You're asking me if I could
5 consciously do that -- conscientiously do that. I don't know.
6 I'm sorry. I wish I had a better answer for you, but I don't
7 know.

8 MR. WEINREB: Thank you, your Honor. Good morning.

9 THE JUROR: Good morning.

03:04 10 MR. WEINREB: For another minute or two. My name is
11 Bill Weinreb. I'm one of the prosecutors in the case.

12 I just want to follow up on some of these questions
13 about the death penalty. So turning back to Page 23, Question
14 88.

15 THE JUROR: Okay.

16 MR. WEINREB: So you essentially wrote there that you
17 believe the death penalty is unethical.

18 THE JUROR: That's correct. That's how I felt before
19 this happened.

03:05 20 MR. WEINREB: And you no longer believe it's
21 unethical?

22 THE JUROR: No. I do. I'm sorry. I do believe that
23 it is unethical.

24 MR. WEINREB: Then I thought I heard you say just now,
25 you would say ethically -- when the judge was asking you if you

1 could impose it, you said, Ethically, I hope I would not impose
2 it.

3 THE JUROR: Right.

4 MR. WEINREB: Would it be unethical to impose the
5 death penalty, is that --

6 MS. CONRAD: Objection.

7 THE COURT: No. Go ahead.

8 THE JUROR: I would have a very difficult time to
9 impose it. It would be -- I don't really know how I would feel
03:06 10 afterwards. And I have thought about this a lot. One of my --
11 if I could kind of digress a little bit, one of my favorite
12 books is *To Kill a Mockingbird*. I've been coming back to this
13 book a lot with Atticus Finch, whose moral dilemma -- I'm sure
14 you're all familiar with the story -- his moral dilemma of what
15 he feels he has to do for what's right. He sticks to his guns.
16 I've always aspired to him, and I hope that I can still do
17 that. But I can't -- I don't know if I could do that.

18 MR. WEINREB: So what would -- what could cause you to
19 do something that, again, you think is unethical?

03:06 20 THE JUROR: The evidence in the case and the -- the
21 evidence that's presented in the case. I don't really know how
22 that will affect me, if that will change my feeling towards the
23 death penalty.

24 MR. WEINREB: So you would need the evidence in the
25 case to change your feelings about the death penalty in order

1 to be able to vote for it?

2 THE JUROR: That might be the case. I don't -- I've
3 never had to take a decision like this, so I don't really know
4 how I'm going to respond.

5 MR. WEINREB: Okay. Thoughtful people give thoughtful
6 answers. I understand that you're thinking a lot about this.
7 But what we're trying to ask you to do here really is to
8 determine if, realistically, in a death penalty case, you could
9 really consider voting for the death penalty and then imposing
03:07 10 it if you believe that it's unethical. And that's the
11 question.

12 THE JUROR: The question is I will consider it. I
13 will consider both sides to it, absolutely.

14 MR. WEINREB: All right. And what -- let me ask you
15 again then. So I'm a little -- I'm still a little unclear on
16 whether what you're saying is that you would have to be
17 convinced by evidence in the case to change your ethical
18 beliefs about the death penalty, go from believing that it's
19 unethical to believing that it's ethical in order to impose it.

03:08 20 THE JUROR: I never thought I would be asked these
21 questions in my life, and so it -- I don't really know how to
22 answer that question. I don't. I would like to -- I think
23 that I could go either way on it, and that kind of troubles me
24 because I always thought a certain way. But now that I'm in a
25 situation, I don't really know which way I would go. Once

1 again, from previous years, I would have thought against the
2 death penalty, but I really can't say that now.

3 MR. WEINREB: Why is that?

4 THE JUROR: Because I don't really know the situation,
5 and I don't -- and I want to do what is right for the law and
6 for everyone. So I'm having a hard -- struggling with that.

7 MR. WEINREB: You understand that the law never
8 requires anyone to vote for the death penalty.

9 THE JUROR: I understand that.

03:09 10 MR. WEINREB: So -- and the law doesn't require you to
11 change your ethics about something.

12 THE JUROR: I understand that, too.

13 MR. WEINREB: So -- but it does require you to be able
14 to consider the death penalty as a real possibility along with
15 life imprisonment without parole.

16 THE JUROR: Yes, sir.

17 MR. WEINREB: So, again, let me return to the question
18 that I asked before and ask you: Would you have come to the --
19 would the evidence have to persuade you that the death penalty
03:09 20 was an ethical thing to do?

21 MS. CONRAD: Objection.

22 THE COURT: No. Overruled.

23 MS. CONRAD: Well, the form, your Honor, and, also,
24 it's unclear whether it's this case or generally.

25 MR. WEINREB: Well, if you were to sit in a capital

1 case, not necessarily this one, any capital case, would you
2 have to hear evidence to persuade you that the death penalty
3 was ethical and not unethical in order to be able to really
4 consider it?

5 THE JUROR: I think that this is bringing up whether
6 or not I actually believe that the death penalty is ethical or
7 not. I think that's where this is going for me personally.
8 That's where it is.

9 MR. WEINREB: You believe it's unethical?

03:10 10 THE JUROR: I'd have to -- I'm considering it. I'm --
11 everything that's coming up, I'm considering what my beliefs
12 are, and that's why I have a hard time saying I'm either for it
13 or against it right now. That's why.

14 MR. WEINREB: Can I just ask you about something else
15 for a minute? Could you turn to Page 22?

16 THE JUROR: 22?

17 MR. WEINREB: Yes, Question 85.

18 THE JUROR: Okay.

19 MR. WEINREB: Excuse me one second.

03:11 20 (Discussion held off the record.)

21 MR. WEINREB: You mentioned that you know the witness
22 who was identified as No. 7.

23 THE JUROR: Yes. Actually, that was -- that was a
24 mistake. I know another person who has a very close name to
25 that, and I was -- so I put down that -- I'm sorry, No. 7.

1 THE COURT: Here's No. 7.

2 THE JUROR: I'm sorry. Yeah. Actually, I don't know
3 that person. There is another person in the area who has a
4 name similar to that, and I -- I was mistaken in that.

5 MR. WEINREB: Okay. No problem.

6 THE JUROR: That's why I wrote the little --

7 MS. CONRAD: Can I just clarify? That's as to No. 7
8 or 272 or both?

9 THE JUROR: Number 7, I don't know; No. 272, I am
03:12 10 familiar with.

11 MR. WEINREB: Nothing further, your Honor.

12 THE COURT: That's it.

13 MS. CONRAD: I'm sorry. Can I just pass something to
14 Mr. Chakravarty real quickly on that last point?

15 Good afternoon. I'm sorry. I'm Miriam Conrad. I'm
16 one of Mr. Tsarnaev's lawyers.

17 THE JUROR: Hello.

18 MS. CONRAD: It sounds like -- and tell me if I'm
19 wrong -- let me back up. Mr. Weinreb asked you some questions
03:13 20 about your views of the death penalty.

21 THE JUROR: Yes.

22 MS. CONRAD: Sounds like they're a little bit in flux
23 right now. Is that fair to say?

24 THE JUROR: I think that's fair to say.

25 MS. CONRAD: And so, as you sit here today, would you

1 be able, as a juror, to listen to the evidence, to discuss the
2 evidence with the rest of the jury, and to come to your own
3 decision, understanding that you're never required to vote for
4 the death penalty, as to whether death or life without
5 possibility of release is the appropriate sentence?

6 THE JUROR: I believe that I would.

7 MS. CONRAD: So you would not go into this with your
8 mind already made up?

9 THE JUROR: I would not.

03:14 10 MS. CONRAD: Thank you very much.

11 THE COURT: Okay, sir. Thank you. Thank you very
12 much.

13 THE JUROR: Thank you.

14 THE COURT: Let's take a short, ten-minute break.

15 (Recess taken at 12:08 p.m.)

16 (The Court entered the room at 12:21 p.m.)

17 THE COURT: Give us just a minute so I can look at
18 this.

19 [REDACTED]

03:27 20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

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. . . END OF SIDEBAR CONFERENCE.)

THE CLERK: Juror No. 638.

THE JURY CLERK: Juror 638.

THE CLERK: Ma'am, over here, please. Have a seat.

THE COURT: Good afternoon.

THE JUROR: Good afternoon.

THE COURT: Since you were last here, have you been able to avoid talking about the substance of the case with anyone?

THE JUROR: Yes.

THE COURT: Also, as much as you could, avoid media

1 reporting about the case?

2 THE JUROR: Yes.

3 THE COURT: Putting aside things if you see them?

4 THE JUROR: I'm not a big media, so that's a yes.

5 THE COURT: Tell us about your employment. You work
6 for the Department of Developmental Services. Tell us about
7 the department first. What's the scope of its
8 responsibilities?

9 THE JUROR: I don't know if you're familiar, but it
03:30 10 recently had -- a few years ago it had a change. It used to be
11 the Department of Mental Retardation. Now it's the Department
12 of Developmental Services. We try to teach people everyday
13 living skills, things like how to brush their teeth. We do a
14 lot of direct care providing, like bathing and changing.

15 THE COURT: Okay.

16 THE JUROR: I'm a supervisor.

17 THE COURT: You're a supervisor. Do you spend most of
18 your time supervising, or do you do patient -- client attention
19 as well?

03:31 20 THE JUROR: I do everything.

21 THE COURT: All right. You've indicated, in answer to
22 our question about the schedule in the case and so on, that
23 you're not concerned about it being a --

24 THE JUROR: No.

25 THE COURT: -- real burden for you?

1 THE JUROR: No.

2 THE COURT: And that includes financially? You will
3 be paid for being here?

4 THE JUROR: Yes. As long as I get my mileage back,
5 I'm good to go.

6 THE COURT: Don't worry about that.

7 Tell us about your use of social media, I guess,
8 Facebook, is that it?

9 THE JUROR: Yeah, Facebook.

03:31 10 THE COURT: How do you use it?

11 THE JUROR: I'm connected with families and friends on
12 it. It's -- I like the funny little pictures and videos and
13 games. And every morning I pop on, and I say "happy" whatever
14 day it is.

15 THE COURT: Okay. Could we have a brief sidebar?

16 (SIDEBAR CONFERENCE AS FOLLOWS:

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

03:32 20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

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1	[REDACTED]
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THE COURT: We'll go off or back on, I guess is what I mean, off sidebar.

. . . END OF SIDEBAR CONFERENCE.)

THE COURT: Okay. Let me ask you to look at Page 20, Question 77, near the top. In that question we asked jurors whether, based on things you'd seen or read in the media or from other sources, you had formed various opinions about whether the defendant was guilty or not or whether he should receive the death penalty or not. To each of the four subparts there you indicated "unsure." Would you tell us about that? Why did you answer that way?

1 THE JUROR: Because I have not sat in the courtroom
2 and heard what the attorneys and the prosecutors have to offer.
3 I really don't follow the news media on anything.

4 THE COURT: Okay. So you understand, I'm sure, that
5 in a criminal justice system, a person who's accused of a crime
6 is presumed to be innocent, or not guilty, unless the
7 government proves the person guilty by the evidence at trial
8 and proves that to the jury so that they have no reasonable
9 doubt about the fact of guilt. Do you understand those
03:35 10 principles?

11 THE JUROR: Uh-huh.

12 THE COURT: If you were a juror in this case, would
13 you be able to listen to the evidence presented in the case and
14 make your decision ultimately based on only the evidence
15 presented in the course of the case?

16 THE JUROR: Yes.

17 THE COURT: You understand that a defendant has no
18 obligation to prove he's not guilty, that the burden is always
19 with the government to prove that he is guilty. And if the
03:36 20 government satisfies that burden, it's entitled to a verdict of
21 guilty. But if the government fails to convince the jury
22 beyond a reasonable doubt as to any particular charge, that the
23 defendant is guilty of that offense, the jurors are obliged to
24 find the person not guilty?

25 THE JUROR: I understand.

1 THE COURT: If you thought the government, as to any
2 particular charge, had not sufficiently convinced you that the
3 defendant was guilty of that offense, would you be able to find
4 the defendant not guilty?

5 THE JUROR: My comprehension is a little flustered
6 because this is a really big --

7 THE COURT: Yes, it is. It's an intimidating
8 circumstance. Let me try to simplify it. The government has
9 the burden of proof.

03:37 10 THE JUROR: Yes.

11 THE COURT: If it carries the burden of proof by
12 convincing the jury as to a particular charge that the
13 defendant is guilty, then it's entitled to a verdict of guilty.

14 THE JUROR: Yes.

15 THE COURT: If it doesn't convince the jury beyond a
16 reasonable doubt as to a particular charge, if the government's
17 evidence fails to convince the jury beyond a reasonable doubt
18 that the person has committed the particular crime charged,
19 then the defendant is entitled to be and should be -- must be
03:37 20 acquitted. And the question is: Would you be able -- if you
21 were not convinced on any particular charge that the government
22 had proved that charge beyond a reasonable doubt, would you be
23 able to find the defendant not guilty?

24 THE JUROR: Yes.

25 THE COURT: Okay. Do you understand the question?

1 You're scowling a little. That's why I'm asking.

2 THE JUROR: Uhm.

3 THE COURT: Let me try it another way. You understand
4 the burden of proof is always with the government and not with
5 the defendant. The defendant has no obligation to prove he's
6 not guilty.

7 THE JUROR: Yes. It's the prosecutor's job to prove
8 guilt.

9 THE COURT: Right, right. The question never is which
03:38 10 side has convinced me.

11 THE JUROR: Correct.

12 THE COURT: The question is has the government
13 convinced me beyond a reasonable doubt that the defendant, any
14 defendant, is guilty of the crime charged in this particular
15 case -- in the particular count of a case. Do you understand
16 that?

17 THE JUROR: Yes.

18 THE COURT: So the question is: If you, after
19 listening to all the evidence, had a doubt about whether the
03:38 20 defendant was guilty of that offense or not, would you be able
21 to vote for not guilty on that count?

22 THE JUROR: Yes.

23 THE COURT: Okay.

24 THE JUROR: I gotcha.

25 THE COURT: Are you following me now?

1 THE JUROR: I'm sorry. I'm so sorry.

2 THE COURT: It's a lot of legal terminology.

3 THE JUROR: I'm nervous.

4 THE COURT: Understandable. You're clear now?

5 THE JUROR: I follow you. I clearly follow you this
6 time.

7 THE COURT: Okay. Thank you. We asked a series of
8 questions about attitudes toward the death penalty beginning on
9 Page 23. At Question 88, that was a question whether you had
03:39 10 any general views about the death penalty. That is, as a
11 general proposition, are you for or against the death penalty
12 in general? And you said you have no views.

13 THE JUROR: I have no views.

14 THE COURT: Is it something you've spent any time
15 thinking about?

16 THE JUROR: No.

17 THE COURT: Okay.

18 THE JUROR: I think that's why I have no views.

19 THE COURT: Question 89, we asked you to see if you
03:39 20 could tell us, on a scale from 1 to 10, where you might be,
21 where 1 is opposed to the death penalty so that you could --
22 you think that it should never be imposed, 10 being strongly in
23 favor so that you think it should be imposed whenever a
24 defendant is convicted of intentional murder. And you chose 9.
25 Can you recall what you were thinking when you chose 9?

1 THE JUROR: I think if enough -- I think if enough
2 evidence is presented that it was absolutely horrific, then
3 something could qualify for the death penalty. But other
4 situations might not.

5 THE COURT: Okay. Let's turn to the next page. Here
6 we set forth a number of different propositions that you might
7 or might not agree with, and we asked you to choose one you
8 thought came closest to your view. Would you take a minute and
9 read through all of them, and then we'll talk about the
03:41 10 selection you made.

11 Okay. So you selected (d). "I'm not for or against
12 the death penalty. I could vote for it or I could vote to
13 impose life imprisonment without possibility of release,
14 whichever I believe was called for by the facts and the law in
15 the case." Does that accurately represent your thinking about
16 this?

17 THE JUROR: Yes.

18 THE COURT: So that, in a given case, after -- you
19 heard me describe the penalty phase.

03:42 20 THE JUROR: Uh-huh.

21 THE COURT: So you start now -- the penalty phase only
22 occurs if somebody has been convicted of a crime that qualifies
23 for the death penalty.

24 THE JUROR: Yes.

25 THE COURT: Right? So you have a guilty person,

1 right? Then there's evidence about aggravating factors that
2 might tend to show this was a crime worse than others and,
3 therefore, deserving of a worse penalty than others. And you
4 would have mitigating factors shown perhaps that would tend to
5 show this is not a case for the death penalty. This is a case
6 for life imprisonment instead. You'd weigh all that. Would
7 you be able, after weighing all that and talking about it with
8 your fellow jurors, be open to either possibility?

9 THE JUROR: Yes.

03:42 10 THE COURT: Depending on the facts as you heard them?

11 THE JUROR: Yes.

12 THE COURT: Let's go to the next page, 25, at the
13 bottom, 95, at the very bottom. Coming at it again at a
14 different way, if you found the defendant guilty and decided
15 the death penalty was the appropriate punishment, could you
16 conscientiously vote for the death penalty?

17 THE JUROR: Yes.

18 THE COURT: And you said "yes."

19 THE JUROR: Yes.

03:43 20 THE COURT: And at the top of the next page, If you
21 found the defendant guilty and you decided that life in prison
22 without the possibility of release was the appropriate
23 punishment for him, could you conscientiously vote for that
24 sentence?

25 THE JUROR: Yes.

1 THE COURT: Okay. And that represents your
2 disposition going in?

3 THE JUROR: Yes.

4 THE COURT: You could go in either direction?

5 THE JUROR: Yes.

6 THE COURT: All right.

7 MR. WEINREB: No questions.

8 THE COURT: No questions.

9 MS. CLARKE: Yes. Hi. My name is Judy Clarke. I
03:43 10 already got to ask you one question. But I'm one of Mr.
11 Tsarnaev's lawyers. I just had some follow-up if I might, is
12 that okay?

13 THE JUROR: Yes.

14 MS. CLARKE: You mentioned to the judge on Question 77
15 -- that's Page 20 --

16 THE JUROR: Okay.

17 MS. CLARKE: -- that you marked "unsure" essentially
18 because you haven't sat in court and listened to any evidence,
19 right?

03:44 20 THE JUROR: Correct.

21 MS. CLARKE: Question 73, I think, asked you -- I
22 think that's the page before -- how would you describe the
23 amount of media that you've seen about this case. And you said
24 "a moderate amount." Right?

25 THE JUROR: Yes.

1 MS. CLARKE: Can you help us understand what it is
2 that you recall reading or hearing about the case?

3 THE JUROR: I took the word "seen" very literally.
4 I've seen flashes of clip -- flashes of news stuff on the TV.
5 Where I work, there's a TV on every single dorm. News is on
6 all the time. I'm more into what I'm doing for work, so I'm
7 not hearing it. I'm not just really listening to it. I'm not
8 really even seeing it. I see the news and I see names and
9 stuff, but I'm not following it.

03:45 10 MS. CLARKE: Sure. Can you tell us, though, what
11 stands out that you've heard or seen?

12 MR. WEINREB: Objection in light of the previous
13 answer. It's irrelevant.

14 THE COURT: No. Go ahead. You can answer that.

15 THE JUROR: Like, what I remember hearing?

16 MS. CLARKE: Sure.

17 THE JUROR: On TV?

18 MS. CLARKE: Yeah.

19 THE JUROR: I know there was a bombing at the
03:45 20 Marathon. I know they were looking for people. And they found
21 someone in a boat. That's about it.

22 MS. CLARKE: Did you draw any opinions, conclusions,
23 impressions, based on that information?

24 THE JUROR: No.

25 MS. CLARKE: Okay. Do you ever go to the Marathon or

1 know anything about the Marathon or follow the Marathon event?

2 THE JUROR: No.

3 MS. CLARKE: No. Do you have -- do you remember where
4 you were on April 15, 2013, the day of the Marathon?

5 THE JUROR: Do you know what day of the week it was?

6 MS. CLARKE: It was a Monday. It was Patriots' Day.

7 THE JUROR: I was working.

8 MS. CLARKE: So it was a Monday; you were working?

9 THE JUROR: Yes.

03:46 10 MS. CLARKE: Do you remember how you heard about the
11 Marathon bombing?

12 THE JUROR: I don't remember. I don't know if it's
13 something I saw or something I heard.

14 MS. CLARKE: From a coworker or a friend?

15 THE JUROR: Pretty much. I mean, I know that when it
16 happened it was everywhere. I don't know how much I'm allowed
17 to talk either.

18 MS. CLARKE: Sure. You're allowed to talk.

19 THE JUROR: I'm allowed to talk. I apologize to the
03:46 20 news media, but I just -- I don't believe anything that they
21 put on TV. I'm more of a -- I'm better if I can read
22 something. I don't like the newspapers. I don't like the news
23 media I see on TV. I don't like the news clippings I see on
24 the whole Facebook. I'm just -- I'm kind of introverted, too,
25 so I don't get a lot of social experience, which is why this is

1 so -- my face is probably really red.

2 MS. CLARKE: You're doing fine.

3 THE JUROR: Sorry.

4 MS. CLARKE: The end of that week, do you remember
5 where you were that day, the day of the shelter in place?

6 THE JUROR: No.

7 MS. CLARKE: Did you have to shelter in place?

8 THE JUROR: Shelter?

9 MS. CLARKE: You know what I'm talking about? On the
03:47 10 -- at the end of that week when the governor asked everyone to
11 stay home?

12 THE JUROR: (Shakes head.)

13 MS. CLARKE: You don't remember that?

14 THE JUROR: I am essential staff. It wouldn't affect
15 me.

16 MS. CLARKE: It was a Friday.

17 THE JUROR: It was a Friday?

18 MS. CLARKE: Yes.

19 THE JUROR: I was home.

03:47 20 MS. CLARKE: You can get it by the days of the week.

21 Could I take you to Question 50? It's at Page 15.

22 You talked a little bit about a case that you took some
23 interest in, the Schiavo case out of Florida, and your feelings
24 about that case. Can you help us understand how your feelings
25 about life in that case relate to your feelings about the death

1 penalty?

2 MR. WEINREB: Objection. If at all.

3 MS. CLARKE: If at all.

4 THE COURT: Yeah.

5 MS. CLARKE: You know what I mean?

6 THE COURT: The views that led you to be interested in
7 that case -- I guess you were interested in whether -- you said
8 your interest was, hopefully, they would let her live, which
9 they would keep her sustained on life support, so on and so
03:49 10 forth. Does that -- do your views about that relate in any way
11 to your views about the appropriateness of the death penalty in
12 general or in any particular case?

13 THE JUROR: I took an interest in her because she was
14 receiving all her nutrients through her G tube. The people
15 that I take care of -- I'm trying not to cross any HIPPA lines
16 either because --

17 THE COURT: You can talk generally.

18 THE JUROR: The people that I take care of, a lot of
19 those people are on feeding tubes. They communicate via facial
03:49 20 expressions and eye gazes and stuff. When I had heard some
21 things that -- I think it was her husband was saying that she
22 was a vegetable and there was just nothing there, but her
23 mother was pleading, saying that she could carry a conversation
24 with her or get yes-or-no answers from her eye gaze or facial
25 expressions. I'm familiar with that, and I wanted to see where

1 they were going to go with that because, to me, it would be
2 like taking one of the individuals I care for and just deciding
3 I'm done caring for this person. We're going to unplug them
4 and go about our business.

5 MS. CLARKE: That makes sense. Thank you. So they
6 don't really connect to your views on the death penalty at all?

7 THE JUROR: No, no. It had more to do with what I do
8 for work.

9 MS. CLARKE: More for who you care for now.

03:50 10 THE JUROR: Yeah.

11 MS. CLARKE: I think that's got it. Thank you very
12 much.

13 THE COURT: All right. Thank you. Just leave the
14 questionnaire there. Thanks.

15 THE JUROR: Thank you.

16 THE COURT: Hold up just a minute. Let me assess
17 this.

18 [REDACTED]

19 [REDACTED]

03:51 20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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THE CLERK: Juror 645.

7

THE JURY CLERK: Juror 645.

8

THE CLERK: Sir, over here, please, if you would.

9

THE COURT: Good afternoon.

03:53 10

THE JUROR: Good afternoon.

11

THE COURT: Since you were here to fill out the

12

questionnaire, have you been able to avoid talking about the

13

merits or substance of the case with anyone?

14

THE JUROR: I have.

15

THE COURT: And, as much as you've been able, to put

16

aside any media reporting you see about the case?

17

THE JUROR: Yes.

18

THE COURT: Okay. So we're going to follow up on some

19

of the things you told us in the questionnaire. Let's start

03:53 20

with your employment. You're the owner of a meat processing

21

facility.

22

THE JUROR: Yes.

23

THE COURT: Can you tell us a little bit about the

24

business.

25

THE JUROR: We manufacture ground beef and ground beef

1 patties and supply to various distributors in New England area.

2 THE COURT: How big an operation is it?

3 THE JUROR: We do -- there's only eight employees.

4 THE COURT: How many?

5 THE JUROR: Eight. And we do probably 4 million in
6 sales a year.

7 THE COURT: Okay. And you're the president and owner?

8 THE JUROR: Yes.

9 THE COURT: You are aware of the schedule that we'll
03:54 10 follow on the case?

11 THE JUROR: Yes, I am.

12 THE COURT: Monday through Thursday, 9 to 4.

13 THE JUROR: Yeah.

14 THE COURT: Fridays off. So will you be able to sort
15 of remotely manage the business?

16 THE JUROR: It's kind of tough because I oversee all
17 the day-to-day purchasing and accounting of the business. So
18 for me to not be there -- I would have to actually come, do my
19 service, try and purchase for the company to keep all my guys
03:54 20 going. The downfall is I'm also -- we're such a small
21 operation, I am the repair guy for all the machinery as well.
22 So if something goes down while I'm not there, even today, they
23 would have to shut down until I actually showed back up to
24 repair the unit.

25 THE COURT: Do you count yourself as one of the eight,

1 eight employees?

2 THE JUROR: I do, yes.

3 THE COURT: Among the other seven, are there any other
4 people who are sort of front office type people or are they
5 just line people?

6 THE JUROR: My son works for me, and he could probably
7 step in, but he doesn't know how to repair any of the machinery
8 yet. He's just out of college so he just stepped into the
9 business with me.

03:55 10 THE COURT: So give us an idea of what the hazard is
11 for repairs? How often does that occur?

12 THE JUROR: It could happen, you know, usually there's
13 something that happens once a week, sometimes minor, sometimes
14 major. Like a bearing or a gear will -- thing. If the guys
15 set up the machine wrong, one of my employees, it becomes major
16 because it will actually tear the machine apart. Normally, I
17 have a back-up machine in place but not at this time.

18 THE COURT: Okay. We'll continue?

19 Tell me about use of social media. You say you have a
03:56 20 Facebook listing.

21 THE JUROR: Yeah, but I've only been on it -- somebody
22 else set it up for me, but I don't know. I try to keep private
23 what's private.

24 THE COURT: Can we do a sidebar, please?

25 (SIDEBAR CONFERENCE AS FOLLOWS:

1		[REDACTED]
2		[REDACTED]
3		[REDACTED]
4		[REDACTED]
5		[REDACTED]
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03:57 10		[REDACTED]
11		[REDACTED]
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03:57 20		[REDACTED]
21		[REDACTED]
22		[REDACTED]
23		[REDACTED]
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25		[REDACTED]

1		[REDACTED]
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6		[REDACTED]
7	[REDACTED]	[REDACTED]
8		[REDACTED]
9		[REDACTED]
03:58 10	[REDACTED]	
11		[REDACTED]
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16	[REDACTED]	
17		[REDACTED]
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19	[REDACTED]	[REDACTED]
03:58 20	[REDACTED]	
21		[REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

THE COURT: Okay. All right. Okay. Thank you.
We'll go back on.

. . . END OF SIDEBAR CONFERENCE.)

THE COURT: So I'd like you to look at Page 20.

THE JUROR: Okay.

THE COURT: Question 77, near the top. We asked here,
in some subparts of the question, whether you had formed an
opinion about various matters based on things you'd seen in the
news or heard from other sources. And (a) was whether you had
formed an opinion the defendant was guilty. You checked "yes."

THE JUROR: Yeah.

THE COURT: Then, (c), that he should receive the
death penalty, and you checked "yes" there as well.

THE JUROR: Right.

THE COURT: The question went on to say, "If you
answered yes to any of these questions, would you be able to or
unable to set aside your opinion and base your decision about
guilt and punishment solely on the evidence that will be
presented in court?" You checked "able."

THE JUROR: Right.

1 THE COURT: Would you tell us about that?

2 THE JUROR: Even though you've seen what's happened in
3 the media -- I mean, it was broadcast everywhere -- could you
4 actually say it was him, you know? There was actually -- it's
5 all hearsay by the media pretty much. To be objective, you
6 have to answer yes. You have to get all the evidence and then
7 form your opinion.

8 THE COURT: Okay. So --

9 THE JUROR: I mean, answering yes to the "Do you think
04:01 10 he's guilty?", just from what you hear, yeah, probably.

11 THE COURT: I'm sure you appreciate that in our
12 criminal justice system a person who is accused of a crime is
13 presumed to be innocent or not guilty.

14 THE JUROR: Until --

15 THE COURT: Unless and until the government proves
16 that he's guilty by the evidence at the trial and proves it
17 beyond a reasonable doubt. You're familiar with those
18 principles?

19 THE JUROR: Yes.

04:01 20 THE COURT: For any juror in this case, it's not
21 surprising if they've seen things about the case in the media
22 and have formed some impressions as a result of that.

23 THE JUROR: Right.

24 THE COURT: What we'd ask jurors to do is, if they sat
25 on the case, to pay attention to the evidence actually produced

1 in the course of the trial and focus only on that and not on
2 information they had from any other source including prior news
3 reports.

4 THE JUROR: Right.

5 THE COURT: Do you think you would be able to do that
6 if you were a juror in the case?

7 THE JUROR: Yes.

8 THE COURT: And make your decision only on the trial
9 evidence?

04:01 10 THE JUROR: Absolutely.

11 THE COURT: Do you understand the burden is always on
12 the government to prove a person guilty of an offense that's
13 charged?

14 THE JUROR: Correct.

15 THE COURT: A person charged never has any obligation
16 to prove he's not guilty.

17 THE JUROR: Correct.

18 THE COURT: It's always a question of has the
19 government convinced me by the evidence that this person has
04:02 20 committed the crime that he's charged with.

21 THE JUROR: Yes.

22 THE COURT: If you thought on any particular charge
23 that the government had not shown enough evidence to convince
24 you beyond a reasonable doubt that the defendant had committed
25 that crime would you be able to find him not guilty?

1 THE JUROR: Absolutely.

2 THE COURT: On the next page, 21, we asked about
3 whether you or people close to you had -- this is in Question
4 82 -- participated in various support activities and so on.
5 You say you didn't personally, but you have two sisters-in-law
6 who have Boston Strong merchandise.

7 THE JUROR: I mean, they're marathoners and were there
8 at the time.

9 THE COURT: Okay. Tell us about that.

04:02 10 THE JUROR: They were just in that general area being
11 support people.

12 THE COURT: Were they running in that Marathon?

13 THE JUROR: No.

14 THE COURT: They've run in others, is that it?

15 THE JUROR: Yes.

16 THE COURT: And so they were -- were they at the
17 finish line?

18 THE JUROR: They were at the finish line.

19 THE COURT: Were they at the finish line when the
04:03 20 explosions occurred?

21 THE JUROR: No, they weren't.

22 THE COURT: So they had left?

23 THE JUROR: They had left, yeah.

24 THE COURT: Beginning on Page 23, beginning at Page --
25 I'm sorry, at Question 88, we asked a series of questions about

1 -- are you on 23?

2 THE JUROR: Oh, sorry.

3 THE COURT: -- series of questions about the attitudes
4 towards the death penalty. And 88 itself is a question. If
5 you have any general views about the death penalty, what are
6 they? And you said "no opinion." Can you tell us about that?

7 THE JUROR: Well, I mean, I'm all for the death
8 penalty if it warrants it, but I could go either way. It's
9 solely based on everything that's presented.

04:04 10 THE COURT: Okay.

11 THE JUROR: I mean, so it's kind of either/or.

12 THE COURT: Is this something you've thought much
13 about or a little about?

14 THE JUROR: The death penalty?

15 THE COURT: Or a great deal about it?

16 THE JUROR: This?

17 THE COURT: The death penalty in general, as a policy
18 matter.

19 THE JUROR: Not in great detail. You just hear things
04:04 20 that happen in certain cases, other cases in the past, and, you
21 know, have -- you know, do people deserve it? Yes, if -- you
22 know, if it warrants it, you know.

23 THE COURT: Let's turn to Page 24, Question 90.

24 Question 90 sets forth a series of various positions that

25 somebody might have on the death penalty, and we asked you to

1 read through them and select one that came close to you. Would
2 you just review that? Take a minute now and read through all
3 of them, and then we'll talk about the choice you indicated.

4 THE JUROR: Okay.

5 THE COURT: All right. And you selected (e).

6 THE JUROR: Yes.

7 THE COURT: Which is, "I'm in favor of the death
8 penalty, but I could vote for a sentence of life imprisonment
9 without the possibility of release if I believed that sentence
04:05 10 was called for by the facts and the law in the case." Is that
11 accurate?

12 THE JUROR: Right, yes.

13 THE COURT: Let me ask you for a minute to go back to
14 the previous page, Question 89. There we asked you to put
15 yourself on a scale from 1 to 10 about the death penalty, where
16 1 is strongly opposed. If you read in the preamble, "strongly
17 opposed so that the death penalty should never be imposed."
18 See that? 1 reflects a belief that the death penalty should
19 never be imposed. And as the question puts it, a 10 reflects a
04:06 20 belief that the death penalty should be imposed whenever the
21 defendant has been convicted of intentional murder. That seems
22 a bit inconsistent with the (e) answer on the next page. Could
23 you reconcile those things for us?

24 THE JUROR: Well, let me just read through the other
25 ones, so I'll breeze through those again here.

1 I mean, by saying I'm strongly for it on the previous
2 question, even though (e) is -- you know, it's almost like a --
3 even though, like, you're going from being a death penalty to
4 life imprisonment, that's basically -- you know, it's almost
5 the same as the death sentence because you're never going to
6 leave prison, ever, you know. I mean, that's kind of the way I
7 see it. Either way, it's one -- it's either death or you're
8 going to be incarcerated for the rest of your life. Is life
9 really worth living if you're going to be behind bars for the
04:07 10 rest of your life?

11 THE COURT: This morning I gave you an overview about
12 what we call the penalty phase in a case like this.

13 THE JUROR: Yes.

14 THE COURT: So that occurs only after the jury has
15 convicted somebody of a crime --

16 THE JUROR: Right.

17 THE COURT: -- for which the death penalty is a
18 possibility, right? So you start the penalty phase with the
19 person you have just found guilty of a qualifying crime.

04:07 20 THE JUROR: Right.

21 THE COURT: Okay. The question then is, after
22 considering the evidence, what should the penalty be for this
23 person, for this crime, okay?

24 THE JUROR: Right. But all the facts will, hopefully,
25 give you the sense to either -- go either way with it.

1 THE COURT: That's my question.

2 THE JUROR: There's a lot more facts that are unknown
3 to us at this point in time.

4 THE COURT: But that's my question.

5 THE JUROR: So that would have to make your -- your
6 judgment sway either way.

7 THE COURT: Right. That's what I'm asking you. You
8 tend to be, I hear you, in favor of the death penalty in an
9 appropriate case.

04:08 10 THE JUROR: Exactly.

11 THE COURT: Okay. Would you be open to a decision in
12 either direction, either for the death penalty or for life
13 imprisonment, based on your evaluation of the evidence you
14 heard in the penalty phase?

15 THE JUROR: Yes.

16 THE COURT: In other words, you wouldn't be
17 precommitted --

18 THE JUROR: Right, exactly.

19 THE COURT: -- to one or the other?

04:08 20 THE JUROR: Right.

21 THE COURT: You'd be open to either?

22 THE JUROR: You would have to go in with an open mind.

23 THE COURT: Even understanding that the person has
24 been guilty of a capital crime?

25 THE JUROR: Right.

1 THE COURT: Okay.

2 MR. WEINREB: Good afternoon.

3 THE JUROR: Good afternoon.

4 MR. WEINREB: My name is Bill Weinreb. I'm one of the
5 prosecutors in the case.

6 THE JUROR: Yes.

7 MR. WEINREB: I just wanted to follow up a little bit
8 on your -- what you were saying about your job.

9 THE JUROR: Yeah.

04:09 10 MR. WEINREB: So I notice that -- I think you listed
11 here that from 1981 to 2004 you were the general manager.

12 THE JUROR: Yes.

13 MR. WEINREB: And then you took over?

14 THE JUROR: It was my father and his partner's
15 company. And then they wanted to retire, and I bought the
16 business from the both of them.

17 MR. WEINREB: Got you. Now your son is there, too.

18 THE JUROR: My son. He just graduated college a
19 couple years ago, and now he's -- the job market isn't so good.

04:09 20 MR. WEINREB: Is he essentially the manager?

21 THE JUROR: Yeah. He's the general manager, yeah.

22 MR. WEINREB: So he doesn't have your repair skills?

23 THE JUROR: No, no, no. I'm just -- I'm basically
24 breaking him in. As something happens, him and I will work
25 together in conjunction. I want him to learn because I want

1 to -- I don't want to stay in the business, like my father did,
2 until 79. I want to retire a little early.

3 MR. WEINREB: I understand. If you were selected to
4 be on the jury and a machine broke, is it possible that your
5 son could get a repairman to come in and fix it?

6 THE JUROR: You know, the guys that used to do it are
7 a dying breed. It used to be you could pick up the phone and
8 call any one of a half a dozen. These guys are all gone and
9 retired. You're pretty much on your own. Unless you call a
04:10 10 manufacturer, but he's in Chicago. Then you would have to fly
11 him out and get him to repair the machine. Is it practical?
12 No.

13 MR. WEINREB: Okay.

14 THE JUROR: Because then you'd lose a whole day's
15 worth of production.

16 MR. WEINREB: Speaking of that, so if the machine
17 broke and it was a complicated repair, the kind you had to do
18 yourself, could it be done at the end of the day when you were
19 done or on a Friday?

04:11 20 THE JUROR: Oh, yeah. I could do it at the end of the
21 day if I had to go in and get it done and then go home, along
22 with doing all the regular book work, payroll, and such.

23 MR. WEINREB: The book work and the payroll, is that
24 something somebody else could potentially do?

25 THE JUROR: Yeah, yeah. I mean, I could talk them

1 through it.

2 MR. WEINREB: Okay. Thanks.

3 THE JUROR: You're welcome.

4 MS. CONRAD: Good afternoon. My name is Miriam
5 Conrad, and I'm one of Mr. Tsarnaev's lawyers.

6 Just to follow up a little bit on the impact on your
7 business.

8 THE JUROR: Yes.

9 MS. CONRAD: So if one of these machines broke in the
04:11 10 morning --

11 THE JUROR: Yup.

12 MS. CONRAD: -- and you couldn't fix it till after you
13 got done here -- where is it actually located?

14 THE JUROR: New Market Square, about ten minutes.

15 MS. CONRAD: So close by.

16 THE JUROR: It's close by.

17 MS. CONRAD: What would be the financial impact of
18 that?

19 THE JUROR: You lose a day's production. And the
04:12 20 business that we're in, if you don't supply somebody with
21 something and then they go to a competitor to buy it, then
22 there's always that potential that that customer liked his
23 product more than yours, so you could potentially lose a
24 customer. That's why, I mean -- my father's motto is never let
25 your customers go away to somebody else, so you always made

1 sure you had stuff on hand.

2 MS. CONRAD: How many regular customers do you have?

3 THE JUROR: I probably have maybe -- regular
4 customers, a weekly basis, maybe 250.

5 MS. CONRAD: Would that be a concern to you, a
6 distraction, if you were picked for this jury?

7 THE JUROR: It would be on my mind all day long, make
8 sure that things were operating correctly and sufficient. My
9 son has a good handle on it. He's a bright kid. And, you
04:13 10 know, he's coming along pretty well. Some of the minor
11 repairs, he's, you know, been able to take care of. Some of
12 the major ones, no.

13 MS. CONRAD: Can you give us an idea, over the course
14 of three or four months, you know, how often --

15 THE JUROR: How often?

16 MS. CONRAD: Yeah.

17 THE JUROR: Maybe ten repairs, twelve, at best.

18 MS. CONRAD: So that could represent up to ten lost
19 days of production?

04:13 20 MR. WEINREB: Objection, your Honor. We don't need --

21 THE COURT: That's a little leading.

22 MS. CONRAD: What would that translate into in terms
23 of lost production?

24 MR. WEINREB: Objection.

25 THE COURT: Yeah. I think we have that.

1 MS. CONRAD: Okay. You also -- you gave an answer on
2 Question 74 I couldn't quite make out, Page 19, that related to
3 this, I think.

4 THE JUROR: 74?

5 MS. CONRAD: Can you just read that out loud for us,
6 please?

7 THE JUROR: "As much as I would like to be on any
8 trial for the experience and duty, I feel it would be a burden
9 to me for the proper running of my U.S.D.A. meat processing
04:14 10 plant."

11 MS. CONRAD: Do you still feel that way?

12 THE JUROR: I do.

13 MS. CONRAD: You also mentioned something about
14 purchasing. What would be the impact --

15 THE JUROR: I purchase meat to manufacture on a daily
16 basis. My son has -- actually, I've been training him, you
17 know, over the last couple years. So, yes, he could fill in
18 and do it for me.

19 MS. CONRAD: Okay. You mentioned that -- I think it
04:14 20 was your two sisters-in-law that were at the Marathon that day.

21 THE JUROR: Yes.

22 MS. CONRAD: Are those your wife's sisters?

23 THE JUROR: My wife's sisters.

24 MS. CONRAD: Can you tell me a little bit more about
25 that? Do you know how long before the bombings they left?

1 THE JUROR: No, I'm not sure. I just know they were
2 there.

3 MS. CONRAD: I'm sorry?

4 THE JUROR: I just knew that they were there.

5 MS. CONRAD: Did you know that beforehand or you found
6 that out --

7 THE JUROR: I knew it afterwards.

8 MS. CONRAD: Did your wife know beforehand that they
9 were there?

04:15 10 THE JUROR: Yes.

11 MS. CONRAD: Was she concerned about them when she
12 heard about the bombings?

13 THE JUROR: Yes, she was.

14 MS. CONRAD: Can you tell me a little bit about that?
15 How long?

16 THE JUROR: I didn't really get into too much of the
17 conversation with her. I just knew that she was concerned that
18 they were in the area. And then after she found out that they
19 weren't anywhere near it, at the time it had already left, that
04:15 20 everything was okay. Close-knit family.

21 MS. CONRAD: Do you know how long it was between when
22 she heard about the bombings and when she found out they were
23 okay?

24 THE JUROR: I don't know. I was in the office.

25 MS. CONRAD: Did you -- I'm sorry. Did you shelter in

1 place on the 19th of April?

2 THE JUROR: Did I -- excuse me?

3 MS. CONRAD: Shelter in place during the manhunt on
4 April 19th, that Friday, when people were told to stay home.
5 Did that affect you?

6 THE JUROR: No. I was heading to the Cape.

7 MS. CONRAD: Okay.

8 THE JUROR: I had a ferry to catch.

9 MS. CONRAD: Sorry?

04:16 10 THE JUROR: I have a house on Martha's Vineyard so --

11 MS. CONRAD: You mentioned your son. I think you put
12 down on Question 7 that you also have nine- and ten-year-old
13 sons.

14 THE JUROR: I do.

15 MS. CONRAD: I'm sure you're aware that one of the
16 victims in the bombings was an eight-year-old boy. How do you
17 think the fact that you have sons close to that age, or
18 actually who were that age at that time, would affect you in
19 listening to the evidence in this case?

04:17 20 THE JUROR: I don't think it would affect me one way
21 or the other. It's just -- the case is based on all the
22 evidence. And even in other cases that you see in the media, I
23 mean, it's unfortunate, but, you know, that's just part of the
24 whole grand scheme of what's happened.

25 MS. CONRAD: You put down on Question -- on Page 20,

1 Question 77, the judge asked you about Part (a), but I'd like
2 to ask you about Part (c).

3 THE JUROR: Yup.

4 MS. CONRAD: So you said that you had formed an
5 opinion that Mr. Tsarnaev should receive the death penalty.

6 THE JUROR: Right. That was basically based on, you
7 know, what you hear in the media and stuff like that. So I
8 answered yes to that question because of what I've heard so
9 far.

04:18 10 MS. CONRAD: Now, you understand there's two parts to
11 the trial, right?

12 THE JUROR: I do.

13 MS. CONRAD: And so when you talk about things you've
14 heard in the media, I assume you're talking about things about
15 the crime itself?

16 THE JUROR: Absolutely.

17 MS. CONRAD: And so based on what you've heard about
18 the crime itself --

19 THE JUROR: That's --

04:18 20 MS. CONRAD: -- you formed an opinion --

21 THE JUROR: That's why I answered --

22 MS. CONRAD: -- that he should receive the death
23 penalty?

24 So during -- if at the end of the guilt part of the
25 trial you and the other jurors found or believed that the

1 government had proved beyond a reasonable doubt that Mr.
2 Tsarnaev had committed these crimes, would you then still
3 believe that he should receive the death penalty?

4 THE JUROR: Could I answer that?

5 MR. WEINREB: Objection, your Honor. That's asking
6 him to --

7 THE COURT: That's a little too case specific.

8 MS. CONRAD: But that's 95, your Honor.

9 THE COURT: You can ask it in a different way. Let me
04:19 10 try, actually.

11 You said you formed an opinion that he should receive
12 the death penalty. That's Question 77(c).

13 THE JUROR: Right.

14 THE COURT: The question is: You've also told us
15 that -- at least in a general way, that your understanding of
16 the penalty phase is that you consider both aggravating and
17 mitigating circumstances.

18 THE JUROR: Right.

19 THE COURT: The question is: Would you be able to put
04:19 20 aside any present opinion you have about the penalty that's
21 appropriate for this defendant and pay attention to the
22 evidence in the penalty phase and be open to either option --

23 THE JUROR: Yes.

24 THE COURT: -- for this defendant notwithstanding the
25 opinion you have?

1 THE JUROR: Right.

2 THE COURT: Or -- let me finish the other side of the
3 question. Or is your opinion fixed enough that it would
4 interfere with your ability to truly make a considered judgment
5 on the evidence in the penalty phase and be open to either
6 side? Would it interfere with your -- would your existing
7 opinion interfere with your ability to truly fairly evaluate
8 both options in the penalty phase?

9 THE JUROR: No. I could -- basically, I'm going to
04:20 10 wait until all the evidence -- if I am a juror, you wait. And
11 then you can make a decision then.

12 MS. CONRAD: You seem like you wanted to say something
13 before when I was asking the question. I don't know if the
14 judge will let you say what you wanted to say. You said
15 something like, Let me explain. I would like to let you
16 explain.

17 MR. WEINREB: Your Honor, there was an objection that
18 was sustained.

19 THE COURT: Yeah. I think --

04:20 20 MS. CONRAD: On Question 89 on Page 23, you selected
21 10, which is -- in the question it says that that reflects a
22 belief that the death penalty should be imposed whenever the
23 defendant has been convicted of intentional murder. Is that
24 correct?

25 THE JUROR: Yes.

1 MS. CONRAD: That's your view?

2 THE JUROR: Yes.

3 MS. CONRAD: So if the evidence proves in any death
4 penalty case beyond a reasonable doubt that the defendant
5 convicted -- excuse me, committed an intentional murder, it
6 would be your belief that the death penalty should be imposed?

7 THE JUROR: Could I vote -- you're asking could I vote
8 for the death penalty?

9 MS. CONRAD: No. I'm asking whether it would be your
04:21 10 belief, if a defendant is convicted of intentional murder, not
11 an accident, not self-defense --

12 THE JUROR: Right.

13 MS. CONRAD: -- not insanity but an intentional
14 murder --

15 THE JUROR: Right.

16 MS. CONRAD: -- whether it would be your belief that
17 in that case the death penalty should always be imposed?

18 THE JUROR: Could I -- yes. I could answer yes to
19 that question.

04:22 20 MS. CONRAD: I'm sorry?

21 THE JUROR: Yes, I could answer. That's yes.

22 MS. CONRAD: I'm not asking whether you could impose
23 the death penalty. I'm asking whether you would automatically
24 vote for the death penalty in any case.

25 THE JUROR: That all comes down to the evidence that's

1 been presented.

2 MS. CONRAD: Okay.

3 THE JUROR: You're saying there's a verdict of guilty,
4 intentional murder. Yes, I could. The answer would be yes.

5 MS. CONRAD: I'm sorry. You keep saying, "Yes, I
6 could." I feel like we're talking past each other a little
7 bit, and that's my fault. I apologize.

8 I'm not asking whether you could. I'm asking whether
9 you would always vote for the death penalty in a case where the
04:22 10 defendant was convicted of intentional murder.

11 THE JUROR: Yes.

12 MS. CONRAD: So -- may I have one moment, please?
13 (Discussion held off the record.)

14 MS. CONRAD: So if a defendant were convicted of
15 intentional murder, would you be willing to consider facts
16 about the defendant, such as his background, his criminal
17 record, or would you automatically vote for the death penalty?

18 THE JUROR: Well, wasn't that going to be presented
19 prior to?

04:23 20 MS. CONRAD: No. So there's two parts to the trial.

21 THE JUROR: Oh, the second part.

22 MS. CONRAD: Right. So the first part you would hear
23 evidence about the crime.

24 THE JUROR: Right.

25 MS. CONRAD: The second, if the jury found the

1 defendant guilty -- and I'm talking about any death penalty
2 case now, not this one -- then the jury would decide whether
3 the government had proved the case beyond a reasonable doubt,
4 meaning proved intentional murder, not accident, not
5 self-defense, not insanity, beyond a reasonable doubt. And
6 then after that, the jury would hear additional evidence about
7 the defendant and about the crime and then would be asked to
8 decide whether, based on their own individual judgment, the
9 penalty should be death or life without possibility of release.

04:24 10 So my question is: Based on your answer to Question
11 89, whether having already heard the evidence that convinced
12 you beyond a reasonable doubt that the defendant in this
13 hypothetical case, in this example, let's say, was guilty of
14 intentional murder, would you automatically vote for the death
15 penalty?

16 MR. WEINREB: Objection.

17 THE COURT: That's all right. You can answer.

18 THE JUROR: No.

19 THE COURT: The answer may stand.

04:25 20 MS. CONRAD: Can you explain to me why you picked 10
21 on 89?

22 MR. WEINREB: Your Honor, I think that's been asked
23 and answered a couple times now.

24 MS. CONRAD: I think there's been different answers.

25 THE COURT: There has been.

1 MS. CONRAD: I'm just trying to clarify it.

2 THE COURT: Let me try to clarify it. I've heard you
3 say at different occasions two different things. They do seem
4 inconsistent. Question 10 is kind of -- Question 89, the
5 answer 10, if you look at it.

6 THE JUROR: Right.

7 THE COURT: It was defined in the paragraph that
8 appears above the scale. 10 is should be imposed whenever a
9 defendant has been convicted of intentional murder. That means
04:25 10 there are no exceptions. It should be imposed if the -- it
11 follows from the conviction that he should get the death
12 penalty, okay.

13 In the next page, with Question 90 -- and we've talked
14 about this in some of our dialogue -- you picked (e) that said,
15 while you are generally in favor of the death penalty, you
16 could also vote for a life imprisonment sentence depending on
17 the facts and the law in the case. We talked about the penalty
18 phase and assessing that.

19 THE JUROR: Right.

04:26 20 THE COURT: You told us there that you thought you
21 could wait and hear all that evidence and then make a decision
22 and not automatically choose the death penalty as the
23 punishment for someone guilty of the capital crime.

24 THE JUROR: Right.

25 THE COURT: Those two things are a little bit

1 consistent. Remember I told you there are no right or wrong
2 answers. We just want to know what your condition of mind is.
3 Would you tend to vote for it automatically on conviction of a
4 capital crime, the example being intentional murder; or after
5 convicting somebody of a capital crime, such as intentional
6 murder, would you wait to hear and decide, on the basis of your
7 balancing of the pros and cons, the aggravating and the
8 mitigating? Again, there's no right or wrong answer. We just
9 want to know which you think would be your disposition if you
04:27 10 were a juror in the case.

11 THE JUROR: Right, okay. Well, I mean, I'm all for
12 the death penalty, but, like I said -- I think I said it
13 before. But based on the facts, I feel life imprisonment is
14 just as bad as the death penalty, you know. Obviously, there
15 will be other information in the case that will bring out which
16 way you would want to sway, you know, keeping him in jail or
17 putting him to death.

18 THE COURT: So what's your bottom line?

19 THE JUROR: So -- well, I could go either way. It's
04:27 20 just basically you've got to listen to all the facts, I guess.
21 It's kind -- I can't say whether I'm going to do it all the
22 time or whether I'm not going to do it all the time. You have
23 to hear all the evidence in order to say one way or the other.

24 MS. CONRAD: I'd like to ask two questions not on that
25 subject if I may. I think we've covered that subject pretty

1 thoroughly. Actually, one of those is somewhat related.

2 But on Question 93, if I could, on Page 25, you said
3 you didn't have an opinion about life -- whether life without
4 possibility of release is more or less severe than the death
5 penalty. Today I heard you say something a little different.
6 So I'm wondering if maybe you've given it some additional
7 thought.

8 THE JUROR: Given it additional thought.

9 MS. CONRAD: Can you tell me about that?

04:28 10 THE JUROR: When you're sitting out there in the jury
11 room, you have to think about what's going on.

12 MS. CONRAD: Sure.

13 THE JUROR: Then earlier in the thing talking about
14 the death penalty and stuff like that. At the time I wasn't
15 really sure which way even though I stated I'm all for the
16 death penalty if it warrants it. But, you know, and then --
17 because none of us are really tied to the legal system, so we
18 don't know how all of this works.

19 MS. CONRAD: Of course.

04:29 20 THE JUROR: As you sit in there or you're talking with
21 other people and how things go with the legal system, you kind
22 of have to think about which way you would want to go and what
23 you'd want to do if you were sitting in that box, you know, so
24 -- I didn't have an opinion, and I'm -- you really could go
25 either way. It's all -- like you saw, it's going to come down

1 to the information you presented.

2 MS. CONRAD: Sure. I'm just wondering, as to that
3 question, now that you've had more time to think about it,
4 whether you would answer it differently today.

5 THE JUROR: Probably.

6 MS. CONRAD: And what would your answer be?

7 THE JUROR: On this answer?

8 MS. CONRAD: Yes.

9 THE JUROR: I would base it on just -- I'm going to
04:30 10 stick with the -- I'm just going to go with whatever evidence
11 is presented --

12 MS. CONRAD: Okay.

13 THE JUROR: -- to sway which way I'm going to go,
14 either way.

15 MS. CONRAD: I may have misunderstood, but is this
16 something -- these questions about the death penalty that,
17 since you filled out this form, you've discussed with other
18 people?

19 MR. WEINREB: Objection, your Honor. Seems like we're
04:30 20 just fishing.

21 THE COURT: No. Go ahead. You can answer that.

22 THE JUROR: No. It's basically my own personal --

23 MS. CONRAD: Sure.

24 THE JUROR: Just thinking about it in general.

25 MS. CONRAD: But you mentioned sitting in the jury

1 room. Was that sort of an internal dialogue?

2 THE JUROR: This was when the judge was up there
3 talking about, if you had to basically vote for the death
4 penalty, then you have to think about that, then talk about the
5 evidence and stuff like that. You basically have to -- you're
6 thinking about it and you're, like, one minute I'm saying --
7 you get hostile, and you're all for the death penalty. And
8 then you come here and you sit in front of all the legal teams
9 and the judge, and you have to think, okay, maybe I -- I got
04:31 10 off on the wrong track. I should really hear all the evidence
11 before I, you know, just shout out, yeah, I want the death
12 penalty.

13 MS. CONRAD: Have you spoken -- this is a slightly
14 different subject, a very different subject. Have you spoken
15 to your sisters-in-law about what they experienced on the day
16 of the Marathon?

17 THE JUROR: No.

18 MS. CONRAD: You said it's a close-knit family.

19 THE JUROR: My wife and them. They're together all
04:31 20 the time. I'm always working.

21 MS. CONRAD: I got the impression. Do you have any
22 sense of their feelings about the events?

23 MR. WEINREB: Objection, your Honor. This has been
24 already gone over.

25 THE COURT: I think we've had enough.

1 MS. CONRAD: Thank you very much.

2 THE COURT: I think that's enough. Thank you very
3 much, sir.

4 Okay. We'll take a lunch break, I think, until 2:30.
5 (Luncheon recess taken at 1:27 p.m.)

6 (After the recess:)

7 (The Court enters the courtroom at 2:33 p.m.)

8 THE CLERK: Juror No. 646.

9 THE COURT: I think I'm going to go right to Question
05:38 10 85, if that's okay.

11 MR. WEINREB: That's a good idea.

12 THE JURY CLERK: Juror No. 646.

13 (The juror enters the courtroom.)

14 THE CLERK: Sir, over here, if you would. Have a
15 seat.

16 THE JUROR: Thank you.

17 THE CLERK: And make sure you keep your voice up and
18 speak into the mic.

19 THE COURT: Good afternoon.

05:39 20 THE JUROR: Good afternoon, Judge.

21 THE COURT: Since you were here last, have you been
22 able to avoid talking about the substance or merits of the case
23 with anyone?

24 THE JUROR: Yes.

25 THE COURT: And avoiding media accounts of the case?

1 THE JUROR: Yes.

2 THE COURT: That's the questionnaire that you filled
3 out when you were last here, and we're going to follow up on
4 some of the information. Actually, I'd like to go right to
5 page 22, if you would.

6 So actually, let me just go back for a minute. You
7 are a construction superintendent for Aggregate?

8 THE JUROR: Yes, I am.

9 THE COURT: Okay. And you've done that for a long
05:40 10 time, 20 years or so?

11 THE JUROR: With Aggregate, 20 years; with Middlesex
12 an additional 22 -- I've been in construction for 45 years.

13 THE COURT: Okay. So now let's go to Question 85.
14 You know a fellow named Bob Joyce who is Jeff Bauman's uncle?

15 THE JUROR: Yes, I do.

16 THE COURT: You know that Jeff Bauman is a victim of
17 the bombings?

18 THE JUROR: Yes, I do.

19 THE COURT: So tell us about your relationship with
05:40 20 Bob Joyce.

21 THE JUROR: Bob Joyce actually worked for me when I
22 had my own paving crew with Middlesex probably about 25, 30
23 years ago. He was a laborer. And that's when I first met him.
24 And -- but he only worked for a short period of time. He left
25 and he started his own business. And he does have his own

1 business right now. It's called Allied Paving. And Allied
2 Paving does some paving for Aggregate, which means I have to
3 associate myself with him.

4 THE COURT: Give us a sense of the strength of the
5 association. How frequently, how --

6 THE JUROR: Oh, maybe -- well, I deal mostly -- a lot
7 with his superintendents, but I do acquaint myself with Bob
8 Joyce himself probably maybe once every three weeks, possibly?

9 THE COURT: Okay. Do you know Jeff Bauman himself?

05:41 10 THE JUROR: No, I do not. My son -- my youngest son
11 played Little League ball with him in Cambridge -- in
12 Chelmsford probably about 15 years ago. But I personally do
13 not know Jeff.

14 THE COURT: Knowing that Bob Joyce's nephew is a
15 victim in these events, would that give you any concern about
16 your impartiality as a juror in the case?

17 THE JUROR: Honestly, no.

18 THE COURT: Can you expand on that a little?

19 THE JUROR: I mean, I know Bob Joyce as a -- basically
05:42 20 as a work associate. He's -- I mean, that's as far as our
21 relationship goes.

22 THE COURT: You don't socialize with him?

23 THE JUROR: No, I do not. No.

24 THE COURT: All right. Let me ask you to go to page
25 20.

1 THE JUROR: Yes. Oh, I'm sorry. It didn't look
2 right, did it?

3 THE COURT: No, it didn't.

4 THE JUROR: Okay.

5 THE COURT: Okay?

6 THE JUROR: Yes.

7 THE COURT: Question 77 near the top.

8 THE JUROR: Yes.

9 THE COURT: We asked in that question whether based on
05:43 10 things you'd seen or read in the media or from other sources
11 you'd formed various opinions about whether the defendant was
12 guilty or not or should receive the death penalty or not, and
13 to each of those subparts to the question you answered
14 "unsure."

15 Do you see that?

16 THE JUROR: Yes, I do.

17 THE COURT: Can you tell us why you chose that answer?

18 THE JUROR: Because I am unsure. I believe -- I'm a
19 true believer that in any case like this you'd better be damned
05:43 20 sure one way or the other. And just up until January, when I
21 was told to come in here, all I knew of the case is what was on
22 TV, what was in the papers. And even the papers, I didn't
23 really -- the job position I have in the company, I don't even
24 read -- hardly ever read a newspaper because I'm up and out of
25 the house by four-thirty, five o'clock in the morning, and

1 sometimes I don't get home until seven. I have very little
2 time to read the newspaper.

3 So honestly, it would be what you see on TV or what
4 you hear from word of mouth of what happened. And of course,
5 for the first month or two after the -- what did happen, it was
6 all over the place anyway. So I wrote down "unsure." And
7 guilty is -- I'm unsure. I guess I could say yes, I could say
8 no, but I'm unsure.

9 THE COURT: Okay. So I'm sure you know these
05:44 10 principles but let me just set them out for you. You know that
11 in our criminal justice system, a person who is accused of a
12 crime is presumed to be not guilty, or innocent, of that
13 crime --

14 THE JUROR: Yes.

15 THE COURT: -- unless the government proves that the
16 person is guilty based on the evidence presented at trial and
17 proves that beyond a reasonable doubt.

18 You understand those principles?

19 THE JUROR: Yes.

05:45 20 THE COURT: It's not surprising that people have some
21 information and, therefore, some ideas about what happened in
22 the case from the news reporting.

23 THE JUROR: Uh-huh.

24 THE COURT: What we would ask jurors in this case is
25 whether they could put aside any preexisting ideas that you

1 might have about the case one way or the other and judge the
2 issues presented based only on the evidence presented in the
3 course of the trial.

4 Do you think you'd be able to do that?

5 THE JUROR: That's tough. That's tough. To be
6 totally honest, it would be tough to --

7 THE COURT: Could you expand on that?

8 THE JUROR: I would imagine because the -- there's
9 nobody else that's ever been talked about that could have done
05:46 10 this. And it's not as if it's still up in the air whether or
11 not -- you know, maybe somebody else possibly could have done
12 this and that -- so it's very difficult for me to say that he
13 could be innocent.

14 THE COURT: Okay.

15 THE JUROR: I honestly think so, yeah.

16 (Counsel confer off the record.)

17 MR. WEINREB: Okay.

18 THE COURT: Yeah? All right. Thank you very much,
19 sir.

05:46 20 (The juror exits the courtroom.)

21 MR. BRUCK: Before the next juror comes in, I just
22 wanted to bring this to the Court's attention. I don't think
23 we have to go off.

24 This is a Facebook feed that includes two messages
25 from the juror's son on April 19th that are on this juror's

1 Facebook page. The pages speak for themselves also. It's the
2 second one in the middle of the page and then the last one.

3 MR. WEINREB: Do you have copies for us?

4 MR. BRUCK: I'm sorry, I don't.

5 (Pause.)

6 THE COURT: So when you say the second one --

7 MR. BRUCK: No, it's the second from the top -- from
8 the top of that group.

9 THE COURT: Oh, I see. I see.

05:48 10 MR. BRUCK: About "A mind = blown."

11 THE COURT: Okay.

12 MR. BRUCK: And then at the bottom of the same series,
13 another reference to "kicking his" blank.

14 THE COURT: The first one -- the second one has a time
15 of day on it; the first one doesn't.

16 MR. BRUCK: Maybe I should just --

17 THE COURT: I mean, it's the same day but I couldn't
18 tell which came before which.

19 MR. BRUCK: They both have times of day. One says --

05:49 20 THE COURT: One was in the morning.

21 MR. BRUCK: I'm sorry. It's at the top. Right, one
22 of them has -- the second one does not have a time of day.

23 "That bombing SOB went to my high school. Mind = blown" from
24 the juror's son. And then the last one is 9:20 a.m. "I know,
25 Cam. I saw your street on the news. Tell your mom to kick

1 his..."

2 THE COURT: Right. So I couldn't -- since the first
3 one didn't have a timestamp --

4 MR. BRUCK: It did not have a timestamp.

5 THE COURT: -- is there a way you can tell from the
6 sequencing?

7 MS. CONRAD: Yes. So the first one would be the
8 actual post by the person whose Facebook it is, and then what
9 follows are the comments that come afterwards in chronological
05:49 10 order. So the first one -- it runs in chronological order.

11 THE COURT: So that the first one would have to be
12 before the comments?

13 MS. CONRAD: Exactly.

14 MR. BRUCK: Just before 9:19 a.m. on the 19th, which
15 is after the --

16 MS. CONRAD: I think it's got the date on it, the
17 first one.

18 MR. BRUCK: Yes, it does.

19 MS. CONRAD: It's got the date. But those are all
05:50 20 comments on --

21 THE COURT: That's after the overnight but before the
22 arrest?

23 MR. BRUCK: Exactly.

24 MS. CONRAD: Right.

25 MR. BRUCK: The juror indicates he's active on

1 Facebook, and I just thought --

2 MS. CONRAD: And he's also friends with his son.

3 MR. BRUCK: And he's friends with his son.

4 THE COURT: I'll let you ask about it. You're
5 probably more adept at it than I am.

6 Oh, did you want to see it?

7 MR. WEINREB: Yes.

8 THE COURT: Sorry.

9 (Pause.)

05:51 10 THE COURT: Are we all set?

11 MS. CLARKE: Yes.

12 THE CLERK: Juror No. 649.

13 THE JURY CLERK: Juror 649.

14 (The juror enters the courtroom.)

15 THE CLERK: Sir, over here, please. Have a seat.

16 Make sure you keep your voice up and speak into the mic, okay,
17 so everyone can hear you.

18 THE JUROR: Okay.

19 THE COURT: Good afternoon.

05:52 20 THE JUROR: Good afternoon.

21 THE COURT: Since you were here last, have you been
22 able to avoid talking about the substance or merits of the case
23 with anyone?

24 THE JUROR: Yes.

25 THE COURT: And also as much as you could possibly do,

1 avoid the media? There's a lot of it, but have you been able
2 to turn away from it if you've seen it?

3 THE JUROR: Yes.

4 THE COURT: So we have the questionnaire you filled
5 out. We're going to follow up on some of the information you
6 gave us there.

7 And I want to turn to page 10 first where you describe
8 your employment --

9 THE JUROR: Okay.

05:52 10 THE COURT: -- and talk a little bit about that.
11 Tell us what you do.

12 THE JUROR: Okay. All right. Well, I work at an
13 after-school program with kids. I'm a counselor. And I do,
14 like, dodgeball with them, hockey, crafts.

15 THE COURT: What age are the kids?

16 THE JUROR: The kids range from around six years old
17 to ten.

18 THE COURT: Okay. So they're grade school?

19 THE JUROR: Grade school, yes.

05:53 20 THE COURT: In the public schools?

21 THE JUROR: Yes.

22 THE COURT: So what are your hours?

23 THE JUROR: Three to six.

24 And then I, after that -- actually, I clean a room
25 after that. A preschool room. And that goes to about seven

1 o'clock or so.

2 THE COURT: Okay. If we -- if you were on this jury,
3 we would ask you to be here between nine and four on Monday
4 through Thursday, and off on Fridays, and of course the
5 weekend. Is that going to be a problem for you given your
6 employment?

7 THE JUROR: No, I don't think so.

8 THE COURT: Why not, since there's an overlap? In
9 other words --

05:54 10 THE JUROR: Right.

11 THE COURT: -- you said three to six and we've got
12 nine to four.

13 THE JUROR: But my boss is a really good boss, and I'm
14 also friends with her and stuff, and she's really lenient about
15 it, so...

16 THE COURT: Would you plan to go there after finishing
17 up here or would you just be excused for the first four days of
18 the week and go on Fridays?

19 THE JUROR: I could do either/or. I could go there
05:54 20 and get a couple of hours in and then definitely clean the room
21 and --

22 THE COURT: You would still do the cleaning later on?

23 THE JUROR: At six o'clock, yes.

24 THE COURT: And it wouldn't have a substantial impact
25 on your earning ability?

1 THE JUROR: It might have a little impact but I think
2 it will be all right, yeah.

3 THE COURT: We ask people about their social media
4 use, Facebook.

5 THE JUROR: Yeah.

6 THE COURT: You say you use it one to two hours a day?

7 THE JUROR: Not really. I mainly play games on it.
8 You know, I don't really --

9 THE COURT: Do you exchange posts with family members
05:55 10 and things like that?

11 THE JUROR: No, not really. I pretty much pay my
12 bills and stuff online and stuff like that with it, and that's
13 pretty much it.

14 THE COURT: Are you aware that other family members
15 use it?

16 THE JUROR: Use --

17 THE COURT: Members of your family, do they use it?

18 THE JUROR: Yes, they do.

19 THE COURT: But you don't?

05:55 20 THE JUROR: Not that much, no.

21 THE COURT: Let me ask you to turn to page 20,
22 Question 77 near the top.

23 THE JUROR: Yeah.

24 THE COURT: Do you see that?

25 THE JUROR: Yes.

1 THE COURT: That's a question where we asked based on
2 things you'd seen or heard in the news media or maybe from
3 other sources, had you formed an opinion about whether the
4 defendant was guilty or not or whether he should receive the
5 death penalty or not, and there were four subparts to that.
6 You answered yes to Part A, that you had formed an opinion that
7 he was guilty.

8 Do you see that?

9 THE JUROR: Yes. Yes.

05:56 10 THE COURT: Okay. And then down below after the four
11 subparts, the question goes on to say if you'd answered yes to
12 any of these questions, would you be able or unable to set
13 aside your opinion and base your decision about guilt and
14 punishment solely on the evidence that would be presented to
15 you in court, and you checked "able."

16 THE JUROR: Yes.

17 THE COURT: Would you explain that?

18 THE JUROR: Well, from what I saw at the time in the
19 media, it seemed like from all the evidence that he was guilty.
05:57 20 But if I go to the trial and I hear all the -- you know, all
21 the evidence here, I could change my mind either way, I mean,
22 depending on what I hear at court.

23 THE COURT: Given the amount of publicity in this
24 case, the events received, it's not surprising people have
25 impressions about what happened.

1 THE JUROR: Right.

2 THE COURT: What we would ask any juror to do would be
3 to put aside those impressions and focus entirely and only on
4 the evidence produced in the course of the trial and make any
5 decision required based on that evidence and not on
6 preconceived ideas from other sources.

7 Do you think you'd be able to do that?

8 THE JUROR: I think I would be able to do that, yes.

9 THE COURT: Okay. You understand that in our criminal
05:57 10 justice system a defendant who is accused of a crime is
11 presumed to be not guilty, or innocent of the crime --

12 THE JUROR: Yes.

13 THE COURT: -- unless the government proves otherwise
14 by proving him guilty at trial by the evidence, and proving
15 that beyond a reasonable doubt.

16 You recognize those principles?

17 THE JUROR: Yes, I do.

18 THE COURT: Do you think you would have any difficulty
19 adhering to those principles if you were a juror in this case?

05:58 20 THE JUROR: No. No, I don't think I would have
21 difficulty.

22 THE COURT: In particular, the government's burden of
23 proof beyond a reasonable doubt means that a defendant never
24 has any burden to prove he's not guilty; the burden is always
25 with the government to prove that he is guilty, right?

1 THE JUROR: Yes.

2 THE COURT: You understand that?

3 THE JUROR: Yes.

4 THE COURT: So the question is never which side has
5 convinced me about this, but has the government convinced me by
6 its evidence that this person is guilty of what we've charged
7 him with.

8 If the answer to that is "yes," the jury thinks, yes,
9 the government has persuaded them beyond a reasonable doubt
05:58 10 about that, then the government is entitled to your verdict of
11 guilty. But if you're not convinced beyond a reasonable doubt
12 on any of the charges that are made, the defendant is entitled
13 to be acquitted of those charges.

14 Would you be able to find this defendant not guilty if
15 you thought the government had failed in its burden of proof on
16 any of the particular charges?

17 THE JUROR: I think I would be able to, yes.

18 THE COURT: On the next page, Questions 81 and 82, we
19 asked whether you were affected by the bombings or other
05:59 20 events, including that Friday when people had to stay in
21 because of the hunt that was going on, and then the next
22 question is about your support activities, "Boston Strong"
23 merchandise and so on and so forth. We asked whether you or
24 anybody in your family fell into either of those circumstances,
25 and you said, "I don't know."

1 Let me ask, just, is that -- the "I don't know," I
2 assume, is about other people?

3 THE JUROR: Right.

4 THE COURT: You do know about yourself, I presume?

5 THE JUROR: Yes, I do know about myself.

6 THE COURT: What's the answer about yourself?

7 THE JUROR: About myself? I was in the house with my
8 two children.

9 THE COURT: On that Friday, you mean?

06:00 10 THE JUROR: Yes, when the -- yeah. And, you know, we
11 watched it on TV and everything. But as -- affected as someone
12 in my family was hurt or -- physically hurt or anything, they
13 were not, no.

14 THE COURT: And your children, you say, are in their
15 20s?

16 THE JUROR: Yes. Yes, 25 and 23.

17 THE COURT: Now?

18 THE JUROR: Now.

19 THE COURT: A couple of years ago they were a couple
06:00 20 of years younger?

21 THE JUROR: Yes.

22 THE COURT: Okay.

23 If you'd go to page 23. Beginning with Question 88,
24 we asked a series of questions to learn about jurors' views
25 about the death penalty. Question 88 asked if you had any

1 general views about the death penalty, what are they, and you
2 put "not applicable."

3 Can you tell us about that?

4 THE JUROR: I think I'd have a hard time with the
5 death penalty. I'd have to be really convinced that it would
6 be worthy of it. But I never -- you know, I never really gave
7 it much thought.

8 THE COURT: But are you saying that as a general
9 proposition, that in any case in which the death penalty might
06:01 10 be at issue, you might have a problem with it? Is that what
11 you're saying?

12 THE JUROR: I'm saying --

13 THE COURT: Or are you talking about this case?

14 THE JUROR: No, with any I'd have a hard time thinking
15 about -- you know, taking somebody's life, you know, part of
16 that.

17 THE COURT: Okay. In the next question we asked you
18 to circle a number that indicates where you might be on a scale
19 of 1 to 10 where 1 -- one side is strongly opposed so that you
06:02 20 would never vote for the death penalty and a 10 on the other
21 hand was so strongly in favor that you would vote to impose it
22 whenever a person was convicted of murder.

23 You put yourself in the middle, at 5.

24 THE JUROR: Right. I would have to, I mean, hear all
25 the evidence about it, I think, to make a decision on it. I

1 mean, I'd have a time about it [sic]. But if the evidence
2 proves it, I would -- I mean, I could vote for it, yes.

3 THE COURT: All right. Let's go to the next page, and
4 Question 90. In this question, rather than trying to put you
5 on a numerical scale, we asked you to look at a number of
6 different propositions and see if there was one you thought
7 represented your views accurately. Take a minute to read
8 through all of them right now and then we'll ask you about the
9 one you selected.

06:02 10 (Pause.)

11 THE JUROR: Uh-huh.

12 THE COURT: So you selected D.

13 THE JUROR: Yes.

14 THE COURT: In reviewing that again now, do you think
15 that's still the best choice for you?

16 THE JUROR: Yes. Like I said, I mean, if the evidence
17 proves it, then I could.

18 THE COURT: So D is -- it says you're not for or
19 against it. You kind of indicated here that you tend to be
06:03 20 against it, I guess. Is that fair or not?

21 THE JUROR: I don't know.

22 THE COURT: No? You still think D is --

23 THE JUROR: I still think so. I mean --

24 THE COURT: Okay.

25 THE JUROR: -- like I said, I would have a hard time

1 with it, but I would -- if it merits it, I would.

2 THE COURT: Okay. You heard me this morning explain
3 the so-called penalty phase. That of course presumes that the
4 jury has already concluded that the defendant's guilty of a
5 crime for which the death penalty is possible, right? So you
6 start with the proposition you're dealing with a person who's
7 been convicted and then you decide what's the right penalty.

8 And you've heard the evidence that tends to show it's
9 a serious enough crime that it should be punished by the death
06:04 10 penalty or it's a crime that can be adequately punished by life
11 in prison instead of the death penalty, right?

12 THE JUROR: Yes.

13 THE COURT: And the jury will weigh all that, and each
14 individual juror would make his or her own judgment about that
15 balance and how it tilts, right?

16 THE JUROR: Yes.

17 THE COURT: Are you telling us that you would be
18 prepared -- based on how you evaluated all of that evidence,
19 you would be open to either possibility and committing yourself
06:05 20 to either possibility at the end of your deliberations?

21 THE JUROR: Yes.

22 THE COURT: Not going into it committed one way or the
23 other?

24 THE JUROR: I don't think so.

25 THE COURT: Let me ask you to look at the bottom of

1 page 25, Question 95. We asked if you found the defendant
2 guilty and decided that the death penalty was the appropriate
3 punishment for him, could you conscientiously vote for the
4 death penalty, and you picked "not sure," between yes and no.

5 THE JUROR: Yes.

6 THE COURT: Can you amplify on that at all?

7 THE JUROR: I think I go back to depending on what the
8 evidence was against him, how strong it is against him if I do
9 vote for it or not.

06:06 10 THE COURT: All right. So again, are you saying that
11 you'd make that decision based on what you've heard and you
12 wouldn't have a preconceived idea? Is that what you're telling
13 me?

14 THE JUROR: Yes.

15 THE COURT: Okay.

16 MR. WEINREB: Thank you.

17 Good afternoon.

18 THE JUROR: Hi.

19 MR. WEINREB: My name is Bill Weinreb. I'm one of the
06:06 20 prosecutors.

21 I just wanted to ask you a few follow-up questions.

22 THE JUROR: Uh-huh.

23 MR. WEINREB: You said a couple of times that you
24 think you would have a hard time with the death penalty. Could
25 you just explain what you mean by that?

1 THE JUROR: Well, like I said, I mean, it's -- you're
2 taking someone's life, so I would really have to think about
3 it, I mean, really hard and hear the evidence against him.

4 MR. WEINREB: And is that because you just want to be
5 sure you're doing the right thing or because you have some
6 moral reservation about whether the death penalty's ever
7 appropriate for anybody?

8 THE JUROR: Probably a little of both, I would think.

9 MR. WEINREB: Have you spent a lot of time thinking
06:07 10 about the death penalty before you got your juror summons in
11 this case?

12 THE JUROR: No.

13 MR. WEINREB: Since you got it, have you thought about
14 it?

15 THE JUROR: A little bit, yeah.

16 MR. WEINREB: And can -- well, what's your thinking
17 been?

18 THE JUROR: That it's -- it would be a big decision to
19 make if it came down to it, to, you know -- you know, take
06:07 20 someone's life.

21 MR. WEINREB: Do you have any moral or philosophical
22 or -- views about the death penalty?

23 THE JUROR: Like I said, I never really thought about
24 it before, you know, I was picked to be on the jury -- I mean,
25 to be here.

1 MR. WEINREB: So can you imagine -- not this case, but
2 can you imagine being on a capital case and hearing evidence
3 that would convince you that the death penalty's an appropriate
4 sentence for somebody?

5 THE JUROR: If the evidence is there? I don't...

6 MR. WEINREB: Well, let me put it another way. So the
7 law never requires anybody to impose the death penalty. It's
8 not like you'll be given a checklist of things and if you check
9 them all off, then that means that person deserves the death
06:08 10 penalty. That's always going to be a decision for you to make,
11 each juror individually.

12 THE JUROR: Right.

13 MR. WEINREB: You will hear evidence from both sides,
14 evidence that may lead you to think it's the right sentence and
15 evidence that may lead you to think it's not the right
16 sentence. The question is: Would you go into that process
17 with an open mind and can you imagine situations where you
18 could hear evidence that would convince you that it's
19 appropriate or do you think that you'd -- that could never
06:09 20 really happen?

21 THE JUROR: I could probably hear evidence that would
22 make me think it would be appropriate. I think so.

23 MR. WEINREB: And if you got to that point, if you
24 heard evidence that convinced you that a particular case was
25 the right one for the death penalty, could you then take the

1 next step and actually vote to put someone to death?

2 THE JUROR: It would be really hard.

3 MR. WEINREB: What do you think?

4 THE JUROR: I'm not sure.

5 MR. WEINREB: Okay. Nobody's been in that situation
6 before typically, so it's hard to know. This is our one chance
7 to get a sense from you.

8 THE JUROR: Right.

9 MR. WEINREB: Can you give us a better sense or...

06:10 10 THE JUROR: I don't know. No, I'm not sure. I'm not
11 sure.

12 MR. WEINREB: Are you having more thoughts about it
13 or --

14 THE JUROR: Yeah, now, here.

15 MR. WEINREB: Could you share your thoughts so that we
16 have some sense of what's going on inside your head when you're
17 thinking about this?

18 THE JUROR: I'm just thinking, like I stated before,
19 it's just that, you know, it's someone's life you're taking,
06:10 20 you know. So a lot of thought would have to go into it and
21 there would have to be a lot of evidence to prove that, that
22 it's worth it.

23 MR. WEINREB: Okay. I hear that. And if the
24 evidence, though -- if you heard a lot of evidence and it did
25 prove it, could you take the next step to actually do it, to

1 actually vote to send someone to death?

2 THE JUROR: I don't know that I can now. I don't
3 know.

4 MR. WEINREB: Are your thoughts or feelings changing
5 about it even as you're talking about it right now?

6 THE JUROR: It is, yes.

7 MR. WEINREB: And what are you thinking and feeling?

8 THE JUROR: I'm just thinking the same thing. You
9 know, it's someone's life.

06:11 10 MR. WEINREB: Okay. Thank you.

11 MR. BRUCK: Good afternoon.

12 THE JUROR: Hi.

13 MR. BRUCK: Hi. My name is David Bruck.

14 THE JUROR: Hi, David.

15 MR. BRUCK: Hi. I'm one of Jahar Tsarnaev's lawyers,
16 and I've got a few more questions for you, if that's okay. The
17 good news is that I think I'm the last person to ask you
18 anything.

19 THE JUROR: That will be good.

06:12 20 (Laughter.)

21 MR. BRUCK: I thought that might be good news.

22 THE JUROR: Yeah.

23 MR. BRUCK: Can you tell me if either of your children
24 went to -- knew anything about either of the Tsarnaev brothers
25 from school or --

1 THE JUROR: No. My son -- my son went to school at
2 the same time but didn't know him.

3 MR. BRUCK: Didn't know either one of them?

4 THE JUROR: No.

5 MR. BRUCK: And the school that you -- the
6 after-school program that you're a counselor in, what part of
7 Cambridge is that in?

8 THE JUROR: North Cambridge.

9 MR. BRUCK: North Cambridge?

06:12 10 THE JUROR: Yes.

11 MR. BRUCK: I just want to try to clear up what we've
12 been talking about concerning the death penalty. I understand
13 this is something that weighs heavily on you, like it does on a
14 lot of people. I think the question we're all trying to get at
15 is you told the judge that it would take a lot of evidence, but
16 that if the evidence was there you think the death penalty
17 could be appropriate in some cases?

18 THE JUROR: I think it could be appropriate in some
19 cases, yes.

06:13 20 MR. BRUCK: Right. Depending on the facts?

21 THE JUROR: Yes.

22 MR. BRUCK: Okay. And would you be able to listen to
23 the facts as a juror if the defendant was already found guilty
24 of -- beyond a reasonable doubt of these capital crimes or in
25 any case, not -- let's not talk about this case. If you were

1 on a jury in any case that involved the death penalty, could
2 involve the death penalty, and guilt was proven beyond a
3 reasonable doubt -- are you with me?

4 THE JUROR: Yes.

5 MR. BRUCK: That's the first stage of the trial.

6 THE JUROR: Yes.

7 MR. BRUCK: And then there's a second stage which is
8 devoted to should the death penalty be imposed or should life
9 imprisonment without release be imposed. Only two choices,
06:13 10 right?

11 THE JUROR: Yes.

12 MR. BRUCK: And the judge told you about that.

13 THE JUROR: Yes.

14 MR. BRUCK: Could you listen to the evidence from both
15 sides with an open mind at that stage of the trial?

16 THE JUROR: Yes, I could.

17 MR. BRUCK: And decide, based on the evidence, whether
18 this was one of the cases where life imprisonment was
19 appropriate --

06:14 20 THE JUROR: Yes.

21 MR. BRUCK: -- or whether the death penalty was
22 appropriate?

23 THE JUROR: Yes.

24 MR. BRUCK: Okay. And you -- the law never says that
25 a juror is supposed to vote for the death penalty unless they

1 think it's appropriate, unless the juror himself or herself
2 looks at it that way.

3 THE JUROR: Yes.

4 MR. BRUCK: So let's suppose that -- again, not this
5 case but a really terrible set of facts, all the evidence was
6 proven to your satisfaction.

7 THE JUROR: Yes.

8 MR. BRUCK: The case -- that you concluded that the
9 death penalty was the right way to go. I know you've never
06:14 10 been in this situation, very few people have, but I think what
11 we're getting at is if you decided it was the right thing to
12 do, would you be able to follow through and say so in court --
13 or not in court, but in the jury room in deciding on a verdict?

14 THE JUROR: Yes.

15 MR. BRUCK: That was a yes?

16 THE JUROR: Yes.

17 MR. BRUCK: Okay. And I understand you wouldn't want
18 to.

19 THE JUROR: No, I wouldn't want to. No.

06:15 20 MR. BRUCK: But if you decided it was the right thing
21 to do, you could?

22 THE JUROR: Yes.

23 MR. BRUCK: Okay. Thanks so much.

24 THE COURT: Okay. Thank you, sir.

25 THE JUROR: Thank you.

1 THE COURT: Just leave that there.

2 (The juror exits the courtroom.)

3 THE CLERK: Juror No. 650.

4 THE JURY CLERK: Juror 650.

5 (The juror enters the courtroom.)

6 THE CLERK: Ma'am, over here, please, if you would.

7 Have a seat. Be sure you keep your voice up and speak into the
8 mic so everyone can hear you, okay?

9 THE JUROR: Okay.

06:16 10 THE COURT: Good afternoon.

11 THE JUROR: How are you?

12 THE COURT: Thanks for your patience.

13 Since you were last here, have you been able to avoid
14 talking about the substance or the merits of the case with
15 anyone?

16 THE JUROR: Yes.

17 THE COURT: Answer good and loud so everyone --

18 THE JUROR: Yes.

19 THE COURT: And also avoid, as much as you could, any
06:16 20 media reports about the case?

21 THE JUROR: Yes.

22 THE COURT: Tell us a little bit about your current
23 employment.

24 THE JUROR: I work at Tufts Medical Center in
25 Chinatown in Boston.

1 THE COURT: And what do you do?

2 THE JUROR: I'm a supervisor for patient financial
3 services.

4 THE COURT: What does that involve?

5 THE JUROR: I supervise eight people, and I deal with
6 insurance companies and getting the claims out the door to the
7 insurance companies.

8 THE COURT: Who are covering the individual patients,
9 is that it?

06:17 10 THE JUROR: Yeah.

11 THE COURT: Now, we asked in the questionnaire -- you
12 have the questionnaire there. As I say, we're following up on
13 some of the answers you gave us there.

14 THE JUROR: Okay.

15 THE COURT: If you'd look at page 5, Question 10, we
16 outlined the schedule we planned to follow in the case.

17 THE JUROR: Uh-huh.

18 THE COURT: Monday through Thursday, nine to four, and
19 then Friday off so the jurors could have the day to themselves
06:17 20 to do other things, and that that would probably -- on that
21 schedule we would probably be going for three or four months
22 perhaps.

23 THE JUROR: Uh-huh.

24 THE COURT: You indicated in Question 10 that that
25 would not be a significant hardship for you.

1 THE JUROR: No.

2 THE COURT: But I want to swing over to page, I think
3 it's 19, Question 75 at the bottom.

4 THE JUROR: Uh-huh.

5 THE COURT: We asked -- this was after you got your
6 summons and were concerned about things, this is what kind of
7 things did you say to others or others say to you, I guess,
8 about your possible service, and you said, "Worried/financial
9 hardship."

06:18 10 THE JUROR: That was from my mother.

11 THE COURT: She was worried.

12 (Laughter.)

13 THE COURT: She's a good mother.

14 THE JUROR: Yeah.

15 No, but my work, actually, told me that I would be
16 paid for the time.

17 THE COURT: I just wanted to make sure we understood
18 your situation.

19 So we asked everybody about social media use, and
06:18 20 you've said you use Instagram every day?

21 THE JUROR: Uh-huh.

22 THE COURT: Is that generally social?

23 THE JUROR: Pictures and stuff.

24 THE COURT: Personal family kinds of things and so on?

25 THE JUROR: Yeah, friends and family.

1 THE COURT: You don't use it in your business at all?

2 THE JUROR: No.

3 THE COURT: Do you use it to make comments about
4 public affairs or anything like that?

5 THE JUROR: Jokingly sometimes, yes.

6 THE COURT: To the same group of people or --

7 THE JUROR: Yeah.

8 THE COURT: So let me ask you to turn to page 20, and
9 Question 77. This question we asked based on thing you'd seen
06:19 10 or heard in the media or from other sources, whether you'd
11 formed various opinions about whether the defendant was guilty
12 or not and whether he should receive the death penalty or not.
13 And you answered "yes" as to A, that you thought -- you had an
14 opinion that he was guilty, and as to D you answered "yes" that
15 he should not receive the death penalty, okay?

16 We then asked in the next paragraph of that question,
17 If you answered yes to any of the questions, would you be able
18 or unable to set aside your opinion and base your decision on
19 guilt or punishment solely on the evidence presented to you in
06:20 20 court, and you checked "able."

21 Would you tell us about that?

22 THE JUROR: Well, basically from what I've seen or
23 what I've heard of, I think he's guilty. I don't feel like I
24 could put someone to death unless I really know the facts, so
25 that's where my answer of "able" would be, once everything's

1 presented to me that I don't know about.

2 THE COURT: Let me ask you about the first opinion,
3 whether he's guilty or not. It's not surprising given the
4 amount of coverage the events got that people have impressions
5 about what happened and who's involved and so on and so forth.
6 You understand that in our criminal justice system a person who
7 is accused of a crime is presumed not to be guilty, to be
8 innocent, unless and until the government proves the person
9 guilty by the evidence at trial and proves that beyond a
06:21 10 reasonable doubt.

11 You're familiar with those principles?

12 THE JUROR: Yes.

13 THE COURT: We would ask any juror in this case
14 notwithstanding any prior opinions they might have to pay
15 attention to the evidence in the case and to make their
16 decision based only on that evidence and not on, say, news
17 reports they'd seen earlier.

18 Do you think you'd have any difficulty in doing that?

19 THE JUROR: I don't think I would.

06:21 20 THE COURT: You don't think you would have difficulty?
21 That was a bad question on my part.

22 THE JUROR: Yeah, I don't think I would have any
23 difficulty in forming my own opinions on what's presented to
24 me.

25 THE COURT: In the trial?

1 THE JUROR: In the trial.

2 THE COURT: Excluding things you might have thought
3 beforehand?

4 THE JUROR: Right. Because I know with news media
5 coverage and stuff like that, it's not always 100 percent. You
6 don't know the whole story, so...

7 THE COURT: Right. As we've said, the government has
8 the burden of proof in a criminal case, and it's always the
9 government's burden, and the defendant doesn't have a burden or
06:22 10 responsibility to show he's not guilty. It's up to the
11 government to prove to the jury that he is, right?

12 THE JUROR: Right.

13 THE COURT: So you never shift the burden to the
14 defendant to prove himself not guilty.

15 THE JUROR: Right.

16 THE COURT: Okay?

17 As to any of the particular counts in the indictment,
18 the government would be required to produce evidence that
19 convinced each juror beyond a reasonable doubt that the
06:22 20 defendant was guilty of that offense. If the jurors agreed
21 that they were convinced beyond a reasonable doubt to a
22 particular offense, then the government would be entitled to
23 their verdict of guilty. On the other hand, if the jurors were
24 not convinced as to a particular count that the government had
25 convinced them beyond a reasonable doubt, the defendant would

1 be entitled to be acquitted of that count.

2 Would you, under those circumstances, be able to find
3 him not guilty of that particular offense?

4 THE JUROR: As long it was presented to me and I
5 agreed with it, then yes.

6 THE COURT: In Question 78 you noted that family and
7 friends know that you feel he's guilty?

8 THE JUROR: Uh-huh.

9 THE COURT: Does that alter what you've just told us
06:23 10 in any way about your --

11 THE JUROR: No, a lot of it has to do with -- not only
12 just family, but even where I work. We were kind of a
13 high-level area where we were seeing a lot of people come in.

14 THE COURT: I was going to say, were people brought --
15 victims were brought there. Were you involved in that at all?

16 THE JUROR: No, but I saw a lot.

17 THE COURT: Were you at work on April 15th?

18 THE JUROR: Yes.

19 THE COURT: So tell us what you saw.

06:23 20 THE JUROR: Well, just the news started coming in, and
21 then they had set up in the emergency department and
22 everything. And I saw people -- you know, just a lot of people
23 covered in blood and stuff like that.

24 THE COURT: Where is your office or quarters relative
25 to the emergency room?

1 THE JUROR: It's right in Chinatown.

2 THE COURT: No, but relative to the emergency room.

3 THE JUROR: It's right outside.

4 THE COURT: In other words, your space and the
5 emergency --

6 THE JUROR: The office building is right outside the
7 atrium, which is right where the emergency room is.

8 THE COURT: So what floor are you on?

9 THE JUROR: I'm on the second floor.

06:24 10 THE COURT: Okay. So you were able to see people
11 coming in?

12 THE JUROR: Well, we went out and into the main area,
13 and that's where we saw people coming in. And they had the
14 SWAT teams running around.

15 THE COURT: So you left the office to go down to see,
16 what was going on?

17 THE JUROR: Well, we were leaving, so that was part of
18 it. So as we were on our way out, we had the SWAT teams coming
19 around. They had people coming in and out and all kind of
06:24 20 craziness was going on.

21 THE COURT: How long did you stay?

22 THE JUROR: Probably about half an hour.

23 THE COURT: I'm just guessing, is this like a
24 seven-to-three shift and you were leaving around three?

25 THE JUROR: I work eight to four-thirty.

1 THE COURT: Okay. So it was around four-thirty-ish?
2 Four, four-thirty?

3 THE JUROR: I want to say we left a little early that
4 day, so about four.

5 THE COURT: Okay. Having sort of been an eyewitness
6 to those events, do you think that would have any effect on
7 your impartiality as a juror in the case?

8 THE JUROR: I don't believe it would.

9 THE COURT: Why not?

06:25 10 THE JUROR: Like I said, there's a lot of things I
11 know I don't know about this case. So in trying to form a
12 general opinion on the whole thing, I only see what I saw and
13 can make a statement that point. But until I hear other
14 things, I think I'm a pretty fair person and can make my own
15 judgment.

16 THE COURT: All right. On page 23, beginning at
17 Question 88, we asked a series of questions to gauge what
18 jurors might think about the death penalty. 88 asks in general
19 if you have views about them, what are they, and you said
06:25 20 "none."

21 Can you explain that a little?

22 THE JUROR: I've never really actually, I guess,
23 thought about the death penalty unless it's -- to me the death
24 penalty is something that if you're 100 percent sure that
25 somebody has done something wrong, then that would be it. So

1 I'm kind of -- it's got to be 100 percent or nothing.

2 THE COURT: Well --

3 MR. WEINREB: Your Honor, I think the parties --

4 THE COURT: Okay. All right. I think they've heard
5 enough. Thank you. That's it.

6 THE JUROR: All right. Thank you.

7 (The juror exits the courtroom.)

8 THE COURT: Quarter of? Is that all right?

9 MR. BRUCK: Thank you.

06:26 10 (The Court exits the courtroom and there is a recess
11 in the proceedings at 3:21 p.m.)

12 (The Court enters the courtroom at 3:49 p.m.)

13 (Discussion at sidebar and out of the hearing of the
14 public:)

15 THE COURT: Okay. I think we only have a few to
16 discuss. So we passed 612 and 617 and 619 and 621?

17 MS. CLARKE: That's correct.

18 MR. WEINREB: That's right.

19 THE COURT: I don't remember whether 623 -- was that
06:55 20 resolved?

21 MR. WEINREB: We have -- the government has a motion.

22 MS. CLARKE: And we have no response.

23 THE COURT: I guess that was the impression I had. So
24 we didn't actually do it but it was headed that way, right?

25 MS. CLARKE: That's right.

1 THE COURT: The motion is granted.

2 628 we passed, as well as 634.

3 So that brings us to 637, I think is the first.

4 MR. WEINREB: So, your Honor, the government moves to
5 excuse 637 as being substantially impaired. This juror wrote
6 in answer to Question 78 that he doesn't feel the death penalty
7 is morally right; 88, both in his written answer and then the
8 follow-up answers, he said, "Ethically I'm against the death
9 penalty; I think it's wrong," and repeatedly that he hopes that
06:55 10 he would follow through on his ethical feeling, that he would
11 be proud of himself if he stuck to his guns.

12 And he seemed to indicate that the only thing that
13 could cause him to overcome that moral and ethical opposition
14 to the death penalty would either be evidence that convinced
15 him that it wasn't an immoral and unethical punishment, which
16 is not something the trial is about, or should be about, or
17 perhaps something where his emotions would overcome his
18 emotions -- his ethics and morals, in which case he seems to
19 indicate he wouldn't be proud of himself.

06:56 20 I think the most telling line that he gave us in
21 trying to explain why he came out where he did was he said in
22 answer to Question 90 that thinking about it now, he would
23 change his answer to a B and that the only reason it wouldn't
24 be an A is that "as an English teacher, I'm afraid of the word
25 never," one of these things we've heard before, which is

1 somebody -- a thoughtful, well-educated person who doesn't want
2 to ever say "never" to anything because they don't want to be
3 absolutist, but as a practical matter, is somebody who is not
4 ever going to be able to impose the death penalty.

5 He seemed to be somebody who wanted to be on the jury,
6 seemed to -- like he thought it would be an interesting
7 experience, seemed very eager to give an answer that was one
8 that he appeared to know was the answer that was called for,
9 but it's clear that he -- you know, it's only because of his
06:57 10 torturous thinking about it that he's even able to say that he
11 would be able to consider it.

12 And in response to Question No. 95 where even if
13 hypothetically he concluded that he could impose -- it was the
14 right thing to do, he said he was not sure he could ever impose
15 it, and he repeatedly gave that answer to the Court.

16 That's just not somebody who is qualified to sit on
17 this jury, especially when we've encountered so many other
18 people who, despite feeling strongly about it or struggling
19 with it, made it clear that they could.

06:58 20 MR. BRUCK: Well, we oppose the motion. I'm not
21 entirely sure we were listening to the same juror from that
22 description. I realize that it was Mr. Weinreb's objective to
23 hope that this juror would say that he could never impose it or
24 that he was really an A, but he never went there. He kept
25 coming back again and again to "it would depend on the

1 evidence."

2 And, in fact, he said that his -- he would have put
3 himself further on the scale, towards a 1, except for this
4 case, which is a perfect expression of the fact that he is open
5 to being persuaded by the evidence and this case provided an
6 illustration. To be honest with you, he gave us a little bit
7 of concern when we saw that in the questionnaire.

8 But in the end, it just -- this is exactly the sort of
9 death-scrupled juror who you would expect to have -- to be
06:59 10 experiencing the tension between his beliefs about the death
11 penalty in the abstract and his recognition that his duty as a
12 citizen is to follow the law and be fair. And that's what he
13 said.

14 His bottom line was, "I want to do right by the law
15 and every" -- "I want to be fair" -- let me think. The exact
16 words were something -- "I want to be fair to" -- or "do right
17 by the law and by everybody," which I don't think could be any
18 clearer a description of the duty of a juror.

19 I don't see any reason to doubt this juror's
07:00 20 sincerity. He just is a very thoughtful, smart, educated
21 person. If the only thing he had said was, "I'm an English
22 teacher so I never say never," then, you know, there may be
23 some merit to what Mr. Weinreb is saying, but clearly this
24 juror is qualified.

25 THE COURT: I agree. My impression of him was that he

1 was confronting the possibility that his prior ethical
2 assessment needed to be adjusted and he was open to adjusting
3 it, perhaps, in this case. And so in summary, I mean, without
4 belaboring it, I think it was consistent with his obvious
5 intelligence and seriousness, but you could almost see
6 him -- it dawning on him that, Maybe I'm wrong. Maybe there is
7 a case that I would do this in and it might be this one.

8 So I think he's fine.

9 638?

07:00 10 MR. WEINREB: We have no motion.

11 MR. BRUCK: We have a motion on this juror, and I do
12 this with some hesitation because, God bless her, I mean, she
13 is doing the Lord's work and I am so grateful for people like
14 her, but she does not seem to have what is required of a juror.

15 She was so undone by this most straightforward
16 question that has not concerned any other juror on Question 77,
17 about her ability to put her opinion aside and -- she said she
18 was unsure. And, just, you asked her to explain it and she
19 started laughing, and it seemed like was on the verge of tears
07:01 20 at the same time, became completely flustered.

21 Putting this lady on the jury would be like having an
22 11-member jury. I just don't think she has the independence,
23 the ability, the life experience in a way to fulfill the duties
24 of a juror, so -- and, you know, maybe in a less complicated
25 case it may not be true, but we just don't think it would be

1 fair to include her on this jury. I don't think it would be
2 fair to her or to the defendant, so we move to disqualify her.

3 MR. WEINREB: Your Honor, we oppose that motion. That
4 Question 77, on the contrary, I think, has bedeviled many
5 people the way that it's phrased. And I think that the manner
6 in which the -- this juror was exhibiting some nervousness
7 about being at a table like this, being confronted by, you
8 know, a tableful of suits, as many jurors have said. I think
9 she was just flustered by the experience of being here and
07:02 10 being put on the spot. So that accounts for much of what we
11 heard in response to her answer.

12 When the Court sort of tried to formulate the question
13 a few times in a way that would put it more plainly, and when
14 the question was put plainly enough to her, she had no trouble
15 understanding it and answering it. And I think to disqualify
16 her just because she might not have as much education as
17 another juror just would be completely unfair.

18 THE COURT: I think she's okay. She was completely
19 nervous, and I think she settled a little bit as she talked a
07:03 20 little bit more and I think we got there.

21 I was actually quite impressed by her response on the
22 Question 50 about the Mary Schiavo [sic] case. When she got
23 into her wheelhouse she settled down and she seemed like a very
24 composed and thoughtful person. And I think she'll be okay.

25 645?

1 MR. BRUCK: We have a cause challenge on this juror,
2 your Honor. This, of course, is the owner of the meat-packing
3 company. And I'd like to -- primarily on the grounds of --
4 there are a number of issues but I think hardship takes care of
5 it, and I would just like to address that unless the Court
6 wishes me to go further.

7 This is a juror -- although he did not request a
8 hardship, he wrote in answer to 74 as -- this is clearly a
9 juror who would like to serve, would like to do his duty. That
07:04 10 was impressive about him. But he wrote, "As much as I would
11 like to take on any trial for the experience and duty, I feel
12 it would be a burden to me for the proper running of my USDA
13 meat-processing plant" -- and that was fully substantiated by
14 his examination here today.

15 The bottom line for him was he said -- "Would you be
16 distracted by all the problems?" He talked about the concerns
17 of the equipment breaking down that only he can get going
18 again, and his words were, "It would be on my mind all day
19 long." All day long for four months.

07:05 20 That -- you know, we have excused -- the Court has
21 excused people because they had a cruise at the end of May.
22 This is a juror we're really asking too much. Even though he
23 is not an hourly paid worker, this is a tiny, little company,
24 he described the competitive pressures, the line is down and,
25 boom, your customers go somewhere else and never come back.

1 That is what is going to be on his mind. When an expert
2 witness is going on and on, he's going to be thinking, "Oh,
3 come on. I've got to get out of here. I've got to see what's
4 happening at the business." We know that's true.

5 So we just don't think it's fair to this juror and we
6 don't think it's fair to the defendant.

7 THE COURT: I wouldn't excuse him on hardship grounds.
8 I think it's tolerable. It is a hardship but it's not the kind
9 of hardship that I think is so impossible, nor do I think in
07:06 10 this case it is a danger that jurors' minds will wander,
11 frankly.

12 MR. BRUCK: Well, I hope you're right.

13 As to the other issues, the Court has -- I understand
14 the juror gave the correct responses in the end -- well, in
15 response to questioning about his ability to put his opinions
16 aside. But I think there is -- if I'm not mistaken, out of all
17 60-something jurors who have been qualified, maybe only one has
18 said that they had an opinion both that the defendant was
19 guilty and that he should receive the death penalty. This
07:06 20 juror is in that category. Like I say, I understand that
21 that's not where it ended, that's just where it started, but I
22 think that creates a rather heavy burden to ask ourselves, you
23 know, do we need to include this juror in the pool.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Then there was the -- he had -- does have some family connection to the events. His two -- his wife's two sisters were there. He said of course that would not affect him either, but it's something to weigh in the mix.

And then there were the very complicated inconsistencies. He was a 10 on the scale and told the Court that he would consider everything and could go either way, but then went back in talking to Ms. Conrad -- and I don't think she was leading him. She was really just asking him the question to cause him to say he was a 10 again, and he endorsed it again.

I think when all is said and done, there is -- and I can't prove this, but it is a reasonable likelihood that the way his various statements on the death penalty are reconciled, is that the weight of the evidence of guilt would determine he could go either way on penalty depending on the aggravation, depending on the proof of guilt. But whether this is really a

1 juror who could consider mitigation, whether he even understood
2 the concept after all the back-and-forth, just remains an
3 unknown.

4 Put all of that together, including, you know, the
5 concern about hardship which the Court feels it's not enough,
6 but -- you know, we both at various times said, you know, we
7 have hundreds of jurors to choose from, this one, there's just
8 too much.

9 MR. WEINREB: Your Honor, the government opposes that
07:09 10 motion. This strikes me as an effort at death by a thousand
11 cuts, which is really more like death by a thousand scratches,
12 and virtually nothing that Mr. Bruck has mentioned is remotely
13 close to being a disqualifying fact.

14 The shoplifting conviction, he said that he didn't
15 report it because -- and he used the word "minor." And it was
16 a little unclear to me whether he was saying it was because it
17 was a minor conviction or because he was a minor when he got
18 the conviction.

19 He's a man in his 50s. If he was a minor, then -- and
07:09 20 it was sealed, which it has been, one could easily understand
21 how he might think that it was not something that he was called
22 upon to report, nor, I think, do we need to have any concern
23 that this is somebody who is concealing things in general or is
24 a deceptive person. He came across as a very honest person.

25 You know, in fact, when he was talking about his

1 hardship, I think he just gave us the facts honestly. He
2 didn't claim a hardship he didn't feel. He told us exactly how
3 he felt about it without embellishing, without trying to make
4 it seem was more than it was or less than it was. And I think
5 we can assume that's true for his answers about pretty much
6 everything.

7 With respect to the death penalty, it's obvious that
8 the defense wants to get rid of him because he's a pro death
9 penalty juror. And I think there's no question that he is.

07:10 10 But he seemed to have no problem when answering open-ended
11 questions and when answering on the questionnaire, indicating
12 that he would be willing to consider both sentences and would,
13 as he kept saying over and over and over again, even as he was
14 being badgered with a lot of questions, that he would look at
15 all of the evidence in making his decision. That was
16 his -- his bottom line. And he was being -- everybody was
17 coming at him in all these different ways, and I think he
18 eventually retreated to that because he wasn't sure exactly
19 what everybody was trying to get at with all of these questions
07:11 20 when he had already given that answer.

21 At one point he did talk about -- with respect to
22 putting a 10 for Question 88 he talked about, you know, if he
23 was found guilty. But I think he indicated through his
24 answers, and we had heard other jurors make this same use of
25 the word, that guilty means you're convinced that the death

1 penalty is the appropriate sentence; in other words, If I found
2 him to be guilty in that sense, that all the evidence has come
3 in, all the evidence I'm ever going to hear, and I make the
4 determination that this is the appropriate thing, yes, then I'm
5 in favor of the death penalty.

6 But at no point did he ever say in a way that
7 contradicted his earlier answers that he would automatically
8 give the death penalty to everybody convicted of an intentional
9 murder or that he would be unable to consider mitigating
07:12 10 evidence. That's just not a fair characterization of what he
11 said during a very lengthy questioning.

12 THE COURT: Well, as with other jurors, he got tangled
13 up a little bit in some of the legal concepts, I think. I
14 think my assessment is that he is open to both sides and --
15 we've said this about somebody else, I think -- is
16 instructable. I think that this kind of abbreviated sort of
17 instruction sometimes can be unhelpful and they get backed into
18 corners.

19 I mean, you know, there's -- Question 89 has been a
07:12 20 troubled question throughout, I think. And so -- I think in
21 the end he indicated that he could be open-minded in a general
22 way, without getting too specific about what those duties would
23 be. And of course we have to think about the environment.
24 When he gets to that point he will have been through the guilt
25 phase and he'll have fellow jurors and he'll have the

1 instructions and so on. Under those conditions, I think he
2 will -- from my assessment of him here, he will be open to
3 being receptive to either argument depending on the evidence.

4 So I would overrule the objection to him.

5 646 I think we dealt with. 649?

6 MR. WEINREB: Your Honor, the government has a motion
7 on 649. This is a juror who I don't think we would argue that
8 he -- he would not -- it's not our argument that he would walk
9 into the jury box automatically in his mind that I am going to
07:14 10 vote for life imprisonment no matter what. He said that he
11 could be open -- he could listen to all the evidence. And in
12 response to Mr. Bruck's question at the end, he even said that
13 he could say, if he believed -- if he came to the conclusion
14 that the death penalty was the appropriate sentence, he could
15 say it to the other jurors, but that's a totally different
16 question as whether if he could vote to sentence somebody to
17 death. That's also a necessary feature of death qualification,
18 somebody who could not only really consider it but could really
19 do it if that were their conclusion. And this was a juror who
07:14 20 clearly, the more he thought about it, the less confident he
21 became that he could do it.

22 He candidly admitted that he hadn't thought much about
23 it. And as we focused him on the question and asked him to
24 really think about it, he was obviously very, very upset about
25 the whole thought of it. You could see him getting emotional.

1 And, you know, there were long hesitations in his answers. He
2 looked -- his body language, his expression signaled his
3 discomfort and his reluctance.

4 Now, that's not to say it's not a weighty decision and
5 that everybody would feel some kind of emotion in rendering it,
6 but there's a difference between the kind of emotion that maybe
7 even a person who was pro death penalty and confident of their
8 ability to do it might feel and the kind of emotion of somebody
9 who's confronting for the first time that they might actually
07:15 10 have to do it and really profoundly -- has profound concerns
11 about their ability to do it.

12 The government is entitled to death-qualified jurors,
13 somebody who can do it to the degree of certainty that anyone
14 can have who's never been in that situation before. We've had
15 those people before who have said, You never know until you get
16 there but I'm pretty confident I could do it. This is not that
17 juror; this is somebody who is quite unconfident that he can do
18 it, and became more and more unconfident, and as it becomes
19 realer and realer, may go more and more in that direction.

07:16 20 And we don't believe it's fair to qualify a juror of
21 that sort.

22 MR. BRUCK: We oppose the strike. We have to go by
23 what the jurors say in the first instance, "Like I said, I
24 would have a hard time, but if it merits it. I'm not committed
25 one way or the other." When Mr. Weinreb was examining the

1 juror, he said a lot of thought would have to go into it. He
2 said he could vote for the death penalty if he thought it was
3 the right thing to do. And then when I was questioning him, he
4 said the same thing and he said it repeatedly.

5 Of course he's like a lot of jurors who have never
6 been confronted with this before. The solemnity of it is
7 weighing on him for the first time. It is emotional. It
8 should be emotional. But he is indistinguishable from many of
9 the jurors the Court has required.

07:17 10 THE COURT: Well, he is a 95-not-sure juror. We've
11 had a number of them, and they've gone both ways. So it's not
12 simply the -- necessarily the form of words that gets used;
13 it's really an assessment about the person as a whole. And I
14 guess I'm inclined to allow the strike.

15 I think he really, really hesitated at the idea that
16 he might be called upon to do it. As Mr. Weinreb points out, I
17 was struck by the long pauses, the very thoughtful pauses as he
18 was kind of saying, What can I do? What can I do here? And he
19 did almost tear up at one point when he was thinking of that.

07:17 20 He mentioned a couple of times -- the decision to take
21 someone's life, showed how deep it was to him. Under those
22 circumstances, I think I have to conclude he's impaired in
23 respect to the death penalty.

24 MR. BRUCK: Well, of course we would note that
25 exception under the *Witherspoon* line of cases.

1 THE COURT: Okay. Okay.

2 And then 650 was resolved, I think.

3 So I believe we have three.

4 THE CLERK: Three, Judge.

5 THE COURT: 637, '38 and '45.

6 THE CLERK: Right.

7 MR. BRUCK: The iron law of three.

8 THE COURT: Apparently.

9 MR. WEINREB: Three and a half, actually. We average
07:18 10 three and a half.

11 THE COURT: Anyway, so we'll maybe get another three
12 tomorrow or something. We'll do this I think just one more
13 day. I don't think we're going to need to go beyond tomorrow.
14 I think the count is at 71. So if we get three, we're at 74;
15 if we get four, we're at 75. I think that will be fine.

16 The question is: What number do you think we should
17 bring in to do that? I mean, what have we been doing, starting
18 with some high number and getting down?

19 MR. McALEAR: Twenty.

07:19 20 THE COURT: I mean, what did we have -- I don't know
21 how many we did today, 12 or 13?

22 MS. CLARKE: We started with 21.

23 THE COURT: No, I mean a net.

24 MS. CLARKE: It was 13.

25 THE COURT: Thirteen? Yeah, so we could go for 20,

1 21, something like that. Actually --

2 MR. McALEAR: I just want to let you know we have 17
3 left on Panel C.

4 THE COURT: Seventeen?

5 MR. McALEAR: Yes.

6 THE COURT: So we have 606 coming in tomorrow, that we
7 kept skipping?

8 MR. McALEAR: Yes. And 647 would not be able to come
9 in until the 26th, which would be Thursday.

07:19 10 THE COURT: Who is 647? Can I see 647?

11 MR. McALEAR: 647 is [REDACTED].

12 THE COURT: Oh, all right. Okay. So this is up to
13 700? Is that --

14 MR. McALEAR: It's up to 682.

15 THE COURT: Okay. And that was how many again?

16 MR. McALEAR: Seventeen.

17 THE COURT: Seventeen plus one?

18 MR. McALEAR: Seventeen plus one, which would be that
19 647, so, which would be that Thursday.

07:20 20 THE COURT: I haven't looked at the group so I don't
21 know how many vulnerable to, you know, joint discharges there
22 are for hardship or various other reasons. Maybe Jim and I can
23 propose it a little later, what the range is.

24 MR. WEINREB: That's fine.

25 THE COURT: Does anybody mind if we go in to the next

1 panel?

2 MR. WEINREB: No.

3 THE COURT: I mean, it would only be the beginning of
4 it, so...

5 MR. WEINREB: No, there's no problem going into Panel
6 D.

7 THE COURT: So I think maybe we can do that. So we'll
8 come up with a list. I haven't looked at it yet.

9 Some housekeeping matters on things getting served and
07:20 10 not served. Could we have the defendant's oppositions to the
11 government's motions in limine served to us through the law
12 clerk by Saturday?

13 MS. CLARKE: To all four?

14 THE COURT: Yeah. Well --

15 MR. WEINREB: Actually, your Honor, the Katherine
16 Porterfield one is a purely sentencing phase.

17 THE COURT: That's right.

18 MR. WEINREB: I'm sorry. Penalty phase.

19 So I don't think there's any need for response to that
07:21 20 anytime before the trial begins.

21 THE COURT: I think that's right. I think that's
22 right.

23 And there's an old one for Vogelsang, I think --

24 MR. WEINREB: That is still pending.

25 THE COURT: -- that is pending but has been briefed, I

1 think. So that's not -- so, yeah, whatever's there.

2 Here's what I want to know, is what do we have to
3 resolve before openings? And I'd like to be able to do that.

4 So let me just sketch out where I think we may go
5 schedule-wise. Assuming we do tomorrow and are satisfied at
6 the end of the day that we can stop the voir dire process -- I
7 know I've said this to people in chambers and I've said it to
8 myself. I don't remember whether I've said it to you. I think
9 I did -- but I want to skip over a few days before we do the
07:22 10 peremptories. I want to do that right before we empanel the
11 jury officially. I don't want 18 selected people hanging out
12 there for days before they get sworn. It just invites trouble.

13 So my thought is to set aside some days to resolve
14 these legal issues, and then perhaps Monday have argument on
15 any motions in limine and any other motions we need to resolve,
16 and resolve them Monday. Have argument in the morning and have
17 a decision either right then or by the afternoon or something
18 like that. It would be relatively summary, obviously, without
19 a lot of explanation, but we could resolve them. Tuesday have
07:23 20 the 70-whatever jurors in to do the peremptories.

21 Backing up a minute, I guess before that we would
22 resolve any pending issues with respect to jurors as to which
23 there are some issues, okay? So there won't be necessarily 70,
24 maybe there will be the high 60s or whatever the outcome of
25 that is.

1 But have them in on Tuesday, complete the peremptory,
2 plan then to have the 18 -- 12 jurors and 18 -- and six
3 alternates in Wednesday morning, swear them, and begin the
4 case, okay? So that's my broad outline. And it will fit in
5 with -- so it might be then that we would have no -- well, I
6 won't say no, but no significant courtroom proceedings on
7 Thursday and Friday, but Monday, and proceed that way, okay, as
8 we tidy up some of these things?

9 I think there are a couple of ex parte matters I need
07:24 10 to discuss with the defense, and I don't know whether any with
11 the government, so we might try to do those on Thursday and
12 Friday somehow.

13 MS. CLARKE: Okay.

14 THE COURT: So that's the general outline. Any
15 comments?

16 MS. CLARKE: No. We brought with us to discuss with
17 the government our list of motions that we think are
18 outstanding, so perhaps we can do that.

19 MR. WEINREB: We're happy to stay behind and try to
07:24 20 get that to you this afternoon.

21 THE COURT: Okay. So anyway, Saturday any oppositions
22 emailed to us.

23 MS. CLARKE: If it needs to be resolved before --

24 THE COURT: If it needs to be resolved before opening.
25 Yes, of course if it's --

1 MS. CLARKE: If it's a penalty-phase motion --

2 THE COURT: Absolutely. And even if it's a guilt
3 phase but --

4 MS. CLARKE: Not opening.

5 THE COURT: -- can be omitted in the opening, skipped
6 over, that's fine too. I mean, in an ordinary case my
7 experience is very few motions in limine are resolvable before
8 trial. You always want to see what the conditions are when the
9 issue arises.

07:25 10 That just sparks one of the -- you know, I think it's
11 maybe in the status report and the government's response and so
12 on -- the mockup. Has the defense seen the mockup, the
13 Boylston Street mockup? I'd like that to happen as soon as can
14 be so that we can resolve that -- any problem there, if there
15 is one.

16 MR. WEINREB: So we actually currently do not intend
17 to use the mockup other than we've been using it for witness
18 preparation. But we're actually -- I'll discuss with the
19 others --

07:25 20 THE COURT: Okay. Well, if you're not going to going
21 to use it, that makes it easy. I just don't want a last-minute
22 problem with the carpentry department.

23 MR. WEINREB: Of course.

24 So the government has a couple of motions that are
25 pending that don't, strictly speaking, have to be resolved

1 before opening statements or have to do with the admission of
2 evidence but are things that are urgent for other reasons. For
3 example, the motion to take the section of the boat that has
4 the note on it so that it can be brought into court, certain
5 things that just require some lead time.

6 There's also an issue with respect to overseas
7 witnesses that to the extent that they need visas and they need
8 government assistance in getting in, that's not something that
9 can just happen overnight. So there are certain things that --
07:26 10 we'll flag them --

11 THE COURT: Okay.

12 MR. WEINREB: -- what we consider to be sort of urgent
13 motions even though they're not motions in limine, per se,
14 pertaining to opening statements.

15 THE COURT: Okay. Does the defense plan to open at
16 the beginning of the case or reserve?

17 MS. CLARKE: Open.

18 THE COURT: Okay. So just on that subject, can you
19 give me an idea of the time required for combined openings?

07:27 20 MR. WEINREB: The government estimates an hour.

21 MS. CLARKE: Far less than that.

22 MR. WEINREB: Hopefully it will be less.

23 THE COURT: Okay. And so Wednesday morning we would
24 expect to get the first witness?

25 MR. WEINREB: Yes.

1 THE COURT: Because we'll have selected the jury the
2 day before; in other words, reduced it to the 18, they'll just
3 report, and we won't swear them until that morning, just for
4 obvious reasons, I guess, and then -- okay. Okay.

5 MS. CLARKE: Has the Court decided how strikes will
6 go?

7 THE COURT: No. And I'm open to the suggestion. I
8 don't know whether you've discussed it any further than that.
9 I'm indifferent. I don't want to -- I'll entertain any --

07:28 10 MS. CLARKE: Drawing numbers out of a hat?

11 THE COURT: Any ideas.

12 No, we'll take them in sequence, but whether you want
13 to do it the way I've described is my normal practice or
14 whether you want to take a look at the whole panels and work
15 out something else. I haven't thought that through myself but
16 I was kind of waiting to -- the government put it out there and
17 I was kind of waiting for the defense's reaction to that.

18 MS. CLARKE: I think we were inclined to go with your
19 normal approach.

07:28 20 THE COURT: Well, okay. Maybe that's something we can
21 spend some time on if you want to debate that out. I don't
22 know that there are any rules about it. I think it's -- I
23 guess the only thought I had -- question I had about the
24 government's suggestion was in my method, the alternates become
25 the last six seated, so you know when you're in alternate

1 territory. I'm not sure how that would work.

2 MR. WEINREB: That would still be the case. We would
3 exercise the 20 and the 20.

4 THE COURT: You'd get down to the last -- the three
5 and three?

6 MR. WEINREB: Exactly.

7 THE COURT: Well, that actually raises a separate
8 issue, and that is in my normal practice I don't worry about
9 whether the alternate strike is -- well, whether -- so the
07:29 10 government gets six plus two for the alternates, right?

11 MR. WEINREB: In the normal case, yes.

12 THE COURT: In the normal case.

13 Or one for the alternate or two for the alternate,
14 depending on how many alternates. I never worried about
15 whether seven were used for the original 12 and one for the
16 next. I mean, I don't know whether anybody parses it that
17 precisely. I just deal with it as a total number. And I would
18 be inclined to do that here with the 23, not worry about who's
19 susceptible to 20 and who's susceptible to three. It's just an
07:30 20 accounting problem I'm not sure we need. So you can think
21 about that.

22 In other words, the three extra which are allocated
23 for the alternates, may they only be used on alternates or can
24 you exhaust your 23 before you even get to the alternates, if
25 that's the issue?

1 MS. CLARKE: We think that they can only be used on
2 the alternates.

3 MS. CONRAD: The rule says that. 24 says that.

4 MS. CLARKE: Twenty each and then --

5 THE COURT: That's the number but --

6 MS. CONRAD: Rule 24, I think it's (c), says that all
7 the peremptories for the -- that are assigned for the
8 alternates can only be used for the alternates.

9 THE COURT: Oh, it does say that?

07:30 10 MS. CONRAD: Yeah.

11 THE COURT: Specifically?

12 MS. CONRAD: Yeah.

13 THE COURT: Okay. Well, that answers my question.
14 Okay. So we'll have to pay attention to that boundary, then.
15 That might be easier to do in the practice additional method
16 than in yours, but I haven't thought that out.

17 A number of oppositions by the government to defense
18 motions apparently were actually served but have never been
19 filed. Those include opposition to the defendant's motion to
07:31 20 limit disclosure of foreign defense witnesses. A copy was
21 apparently served but we don't have it formally on the docket.
22 It includes an opposition to the defendant's motion in limine
23 regarding the testimony of terrorism experts and Dr. King. I
24 think none of those oppositions have actually made it to the
25 docket.

1 MS. CLARKE: And we're wondering whether any of it
2 that made it to the docket actually didn't get served on us.

3 THE COURT: Right. And -- well, now, I thought that
4 was happening. I thought that had happened by now.

5 MR. WEINREB: That did happen.

6 MS. CLARKE: Well, we got three on Saturday, Judge,
7 and when we were digging back through to figure out whether we
8 actually picked them up from the Court, we found one that the
9 government still hasn't served but was in there. You know, we
07:31 10 haven't been comparing so we don't know whether we've been
11 served with everything the government has filed or not. That
12 gave us some -- sort of a sense of queasiness.

13 THE COURT: Well, we've had the same experience.

14 (Laughter.)

15 THE COURT: So feel a little bit less queasy.

16 But can we get some representatives of each party to
17 straighten all this out?

18 MR. WEINREB: Yes.

19 THE COURT: Because the docket -- this has been a
07:32 20 complicated docket, and the snow days have not helped because
21 on our part we've had subs sometimes taking over because our
22 personnel weren't here. So we've had some docketing done by
23 people who weren't used to the way we were docketing these
24 things. So we've just got to straighten kind of straighten it
25 all out.

1 The opposition to the defendant's position on the
2 video that we've been showing, we got a courtesy copy mailed to
3 us but there was never a filing in the clerk's office. That
4 was back in early February.

5 On the defense side, the memo in support of the third
6 motion for change of venue, we asked that a couple of juror
7 numbers be redacted in that redacted copy then filed; in other
8 words, the redactions of quotations, but I think we
9 also -- this is Docket -- E-Order 1020 striking a couple of the
07:33 10 juror numbers. It was a minor change but --

11 MS. CONRAD: There was some confusion about that, I
12 think, because there was a page reference in the Court's order
13 and a page of the memorandum.

14 THE COURT: Yeah.

15 MS. CONRAD: And we looked at it and we did not see.

16 THE COURT: Was it off a page?

17 MS. CONRAD: It might have been. I don't know.

18 THE COURT: I mean, it could have been an artifact --

19 MS. CONRAD: There was not a juror number on that page
07:33 20 so we weren't quite sure what to do with that.

21 THE COURT: Well, there are juror numbers, I guess
22 wherever they are.

23 MS. CONRAD: We'll take another look.

24 THE COURT: Okay. And then that -- the
25 redacted -- with that redaction, that can be filed.

1 And the reply to the government's opposition to the
2 defendant's motion to quote materials in the public filings, I
3 denied the main motion but I granted the motion to file, and
4 the reply hasn't been formally filed. This is just neatening
5 up the docket, that's all.

6 MS. CLARKE: In other words, bring the hard copy over?

7 THE COURT: Is it under seal?

8 MS. CLARKE: Everything is.

9 THE COURT: The reply is? Yeah, I guess so. Then
07:34 10 bring the hard copy over and the clerk will put it on.

11 And I think that's where a lot of these things happen.
12 People are emailing them and serving them and things, but the
13 process requires hard copies of sealed documents be given to
14 the clerk and uploaded and so on and so forth. So we're trying
15 to catch up on some of this.

16 Something to think about, we have a little bit of time
17 on it, we mentioned from -- my preliminary instructions to the
18 jury when they've been empaneled, what I may say about the
19 indictment, whether a summary of the indictment can be perhaps
07:35 20 jointly agreed to, that could be shown to the jury or read to
21 the jury or whatever. Give some thought to that. I mean, we
22 don't want to obviously present the whole complicated
23 indictment to them, but maybe a summary of the charges.

24 So I think that's it for now.

25 MS. CLARKE: Thank you.

1 THE COURT: We'll get you the numbers for tomorrow as
2 soon as we can.

3 (The Court exits the courtroom and the proceedings
4 adjourned at 4:31 p.m.)

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C E R T I F I C A T E

We, Marcia G. Patrisso, RMR, CRR, and Cheryl Dahlstrom, RMR, CRR, Official Reporters of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of our skill and ability, a true and accurate transcription of our stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso
MARCIA G. PATRISSE, RMR, CRR
Official Court Reporter

/s/ Cheryl Dahlstrom
CHERYL DAHLSTROM, RMR, CRR

Date: February 24, 2015